United States Court of Appeals for the Second Circuit

APPENDIX

77-4162

A1

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CROSS-SOUND FERRY SERVICES, INC. Petitioner, v. THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Respondents.	)	No. 77-4162

JOINT APPENDIX

VOLUME I

NOV 23 1977

PAGINATION AS IN ORIGINAL

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CERTIFIED
INDEX

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

I, H. G. HOMME, JR., Acting Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached document-index is a true representation and listing of all formal filings and Commission issuances in the proceeding docketed in and identified as W-1270 (MASCONY TRANSPORT AND FERRY SERVICE, INC., INITIAL OPERATIONS - NEW LONDON TO GREENPORT, L.I., NEW YORK). Collectively, the documents listed on the attached index represent the entire formal record in said proceeding, the originals of which are on file and of record in the Office of the Secretary of this Commission, and are available for review, upon request.

IN WITNESS WHEREOF, I have
hereunto set my hand and
affixed the Seal of said
Commission this 7th day
of October, A.D., 1977.

H. G. Homme, Jr.
ACTING SECRETARY OF THE INTERSTATE
COMMERCE COMMISSION

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CASE ON APPEAL CROSS-SOUND FERRY SERVICES, INC. v	THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION	NO. 77-4162	CIR. 2nd
COMMISSION PROCEEDING	DOCKET NO. W-1270	TITLE MASCONY TRANSPORT AND FERRY SERVICE, INC., INITIAL OPERATIONS - NEW LONDON TO GREENPORT, L.I., NEW YORK	

VOLUME I

NO.	TITLE/SUBSTANCE OF DOCUMENT	DATE OF FILING/SERVICE	NO.OF PAGES	PARTY/COMMISSION
1.	APPLICATION: Filed on Form OP-WC 20, seeking authority to engage in operation, in interstate or foreign commerce, as a common carrier by water in the transportation of general commodities and passengers, by self-propelled vessels, between the ports of New London, CT, and Greenport (L. I.), NY.	5/29/73	28	MASS., CONN. & NEW YORK SERVICES, INC. (by G. R. Power)
2.	U. S. CONGRESSIONAL INQUIRY	6/6/73	1	HONORABLE NORMAN F. LENT
3.	LETTER: Responding to the item next above.	6/8/73	1	GEORGE M. STAFFORD, Chairman
4.	LETTER: Addressed to V. K. Hagerty, transmitting a certified copy of applicant's change of name certificate showing applicant's legal name as MASCONY TRANSPORT AND FERRY SERVICE, INC.	6/13/73	2	APPLICANT (by F. J. Weiner)
5.	FEDERAL REGISTER NOTICE: Publication synopsis of the application filing, as amended.	6/21/73	1	BY THE COMMISSION
6.	PROTEST; and REQUEST: For oral hearing.	7/23/73	12	NEW LONDON FREIGHT LINES, INC. (by G. P. MacDougall)
7.	PROTEST	" "	4	THE BRIDGEPORT AND PORT JEFFERSON STEAMBOAT CO. (by J. P. McAllister)

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8.	PROTEST	7/24/73	2	UNITED MARINE DIVISION, N.M.U., A.F.L.-C.I.O. (by J. O'Hare)
9.	LETTER: Addressed to F. J. Weiner, advising that this proceeding has been placed on the hearing docket for assignment and that he should advise the Commission within 15 days, the estimated time needed to present his evidence and the location preferred for the hearing, including an alternative if possible.	8/8/73	1	ROBERT C. BAMFORD, Chief Administrative Law Judge
10.	LETTER: In support of the application.	8/13/73	9	DAVID W. CHAPMAN
11. - 14.	LETTERS (4): In support of the application.	8/17/73	5	PAUL C. KINTZING, JR., Et Al. (and 3 other individuals)
15.	ADDITIONAL CERTIFICATES OF SUPPORT (21)	8/19/73	22	APPLICANT (by F. J. Weiner)
16. - 25.	LETTERS (10): In support.	8/20/73	19	JAMES P. JOHNSON, M.D., et al. (and 9 other individuals)
26.	LETTER: Addressed to R. C. Bamford, requesting that the hearing be initially set at New London, CT and subsequently continue to Greenport, L.I. It is believed that an appropriate estimate of time would be from 5 to 7 days in order for applicant to present its case and witnesses.	8/21/73	1	APPLICANT (by F. J. Weiner)
27. - 34.	LETTERS (8): In support.	8/21/73	8	MR. AND MRS S. L. BROWELL, et al. (and 7 other individuals)

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35.	U. S. CONGRESSIONAL INQUIRY	dated 8/22/73	2	HONORABLE OTIS G. PIKE
36.	LETTER: In support.	8/22/73	1	JOHN V. BEATTIE
37. 39.	LETTERS (3): In support.	8/23/73	5	PETER F. EVANS, et al. (and 2 other individuals)
40. 48.	" " (9) " "	8/24/73	10	RICHARD J. VANDENBROUCK, et al. (and 8 other individuals)
49. 52.	" " (4) " "	8/26/73	4	GLORIA VALENTINE, et al. (and 3 other individuals)
53. 56.	" " (4) " "	8/27/73	5	CHARLES A. ANDERSON, et al. (and 3 other individuals)
57. 64.	" " (8) " "	8/28/73	8	SEYMOUR M. INGRAHAM, et al. (and 7 other individuals)
65. 70.	" " (6) " "	8/29/73	8	AUGUST PERSICHETTY, et al. (and 5 other individuals)
71. 73.	" " (3) " "	8/30/73	4	DORIS LEDERER, et al. (and 2 other individuals)
74. 76.	" " (3) " "	8/31/73	3	STUART P. HOWELL, JR., et al. (and 2 other individuals)
77. 78.	" " (2) " "	9/2/73	2	M. W. STEFFENS; and THOMAS F. HIGGINS
79. 81.	" " (3) " "	9/4/73	3	MR. & MRS. ROBERT C. ALDRIDGE, et al. (and 2 other individuals)

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82.	LETTER: Responding to item #35 above.	9/5/73	1	ROBERT L. OSWALD, Secretary
83. 84.	LETTERS (2): In support.	9/5/73	3	ARCHIE D. FALARDEAN; and JAMES D. BENNETT
85. 87.	" " (3) " "	9/6/73	3	MR. & MRS. C. R. NELSON, et al. (and 2 other individuals)
88. 89.	" " (2) " "	9/7/73	2	LYDIA MEDEROS; and HERBERT SILVA
90.	LETTER: (1) In support .	9/9/73	1	MR. & MRS. JOSEPH FERRARA
91. 93.	LETTERS (3) " "	9/10/73	3	GWEN J. CANFIELD, et al. (and 2 other individuals)
94.	LETTER: (1) " "	9/11/73	2	PATRICIA M. DEE
95.	NOTICE: This proceeding is assigned for hearing on 10/29/73 (1 week), at New London, CT. Hearing may go to other points at the discretion of the Administrative Law Judge.	9/12/73	1	ROBERT L. OSWALD, Secretary
96. 97.	LETTERS (2): In support.	9/14/73	4	DAVID EMILITA and CLINTON BERNARD
98.	LETTER: (1) " "	9/17/73	1	GARDNER M. HEALY
99.	U. S. CONGRESSIONAL INQUIRY	" "	3	HONORABLE ROBERT H. STEELE
100.	LETTER: Responding to the item next above.	9/19/73	1	ROBERT L. OSWALD, Secretary

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101.	ADDITIONAL CERTIFICATE. OF SUPPORT (1)	dated 9/19/73	3	APPLICANT
102.	LETTER: (1) In support.	9/21/73	2	MRS. HENRY McCORMICK GROSS, JR.
103.	" " (1) " "	9/23/73	1	WILLIAM L. HUBER
104.	ADDITIONAL CERTIFICATE OF SUPPORT (1)	9/30/73	3	APPLICANT
105.	NOTICE: Advising of location of hearing room.	10/4/73	1	ROBERT L. OSWALD, Secretary
106.	LETTER (1): In support.	10/9/73	1	P. WALTERMAN
107.	" " (1) " "	10/12/73	1	JOHN F. TOTH
108.	" " (1) " "	10/15/73	2	ALICE D. KELLY
109.	" " (1) " "	10/21/73	1	TOWN OF SHELTER ISLAND (by H. D. Smith)
110.	" " (1) " "	10/25/73	1	RICHARD D. COCHRAN
111. 113.	LETTERS (3): Requesting that a public hearing be held in Greenport, L.I., NY.	dated 10/26/73	3	SAMUEL KATZ, et al. (and 3 other individuals)
114.	LETTER: Requesting that the hearing be held in the Town of Southold.	" " "	1	THE LEAGUE OF WOMEN VOTERS (by J. H. Tiedke)
115.	LETTER: Requesting that the hearing be held in the Village of Greenport, Town of Southold, Long Island, NY.	10/29/73	2	LORAINE S. TERRY; and SAMUEL KATZ
116.	ORDER: That this proceeding is referred to ALJ David Allard for hearing and for Initial Decision.	dated 10/29/73 (not served)	1	COMMISSIONER MURPHY

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117.	HEARING: For testimony adduced and accompanying exhibits entered during the hearings held 1-/20-11/1/73, see Volumes 2 and 4 on pages 37 and 38 of the document-index herein.	10/29-11/1/73	959	DAVID H. ALLARD, ALJ
118.	PETITION: For leave to intervene.	dated 10/31/73	3	THE DEPARTMENT OF TRANSPORTATION, STATE OF CONNECTICUT (by W. J. Lynch)
119.	LETTER: In support.	11/11/73	1	DONALD L. HUNTING
120.	NOTICE: Hearing in this proceeding has been continued to 12/10/73 (1 week), at Greenport, L.I., NY, and further continued hearing will commence on 1/8/74 (1 week), at Greenport, L.I., NY, for cross examination of protestants are submitting verified statements, which are to be submitted by 12/28/73.	11/12/73	1	ROBERT L. OSWALD, Secretary
121.	LETTER: In support.	dated 12/5/73	2	SUFFOLK LIFE (by D. J. Willmott)
122.	" " "	12/12/73	1	RICHARD L. NORTON
123.	HEARING: For testimony adduced and accompanying exhibits entered during the hearings held 12/10-13/73, see Volumes 2, 3 and 5 on pages 37 and 38 of the document-index herein.	12/10-13/73	1091	DAVID H. ALLARD, ALJ
124.	LETTER: In support.	12/13/73	1	MRS. REGINALD NORRIS

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125.	VERIFIED STATEMENT	dated 12/17/73	1	RALPH L. OTIS (representing New London Freight Lines)
126.	LETTER: Addressed to D. H. Allard, confirming telephone conversation of 12/19/73, when he consented to enlargement of time for New London to file its prepared statements from 12/28/73, to 1/4/74.	dated 12/19/73	1	NEW LONDON FREIGHT LINES (by P. A. Greene)
127.	VERIFIED STATEMENT	dated 12/20/73	2	DOUGLAS H. SMITH, M. D. (representing New London Freight Lines)
128.	LETTER: Advising that they will petition for leave to intervene at the hearing scheduled for 1/8/74, at Greenport.	dated 12/28/73	1	NEW YORK STATE DEPARTMENT OF TRANSPORTATION (by J. C. McTiernan)
129.	LETTER: Addressed to D. H. Allard, transmitting copies of verified statements of direct testimony of 11 witnesses. Also, requesting Mr. Weiner to advise of the names of any of the witnesses who he does not desire to cross examine so that they may be spared the needless inconvenience of traveling to the hearing. All underlying records will be available for examination by applicant's counsel at Greenport on 1/7/74.	dated 1/2/74	2	NEW LONDON FREIGHT LINES, INC.; and BRIDGEPORT AND PORT JEFFERSON STEAMBOAT COMPANY (by P. A. Greene)
130.	LETTER: Addressed to D. H. Allard, stating that it has been called to his attention that the Applicant has indicated (cont'd)	dated 1/4/74	2	PENN CENTRAL TRANSPORTATION COMPANY (by J. D. Kernan)

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130.	(continued) that the Trustees of the property of Penn Central are agreeable to the greatly increased traffic over the private grade crossing that a new ferry service in New London would create. On behalf of the Trustees, he would like to state that they are strongly opposed to such use.			
131.	HEARING: For testimony adduced and accompanying exhibits entered during the hearings held 1/8-10/74, see Volumes 2, 3 and 5 on pages 37 and 38 of the document-index herein.	1/8-10/74	973	DAVID H. ALLARD, ALJ
132.	COMMENTS	dated 1/10/74	1	PERRY B. DURYEA AND SON, INC. (by P. B. Duryea, Jr.)
133.	LETTER: In support.	1/11/74	2	ROGER M. SHERMAN
134.	COMMENTS	dated 1/14/74	1	BARBARA VILLELLA
135.	LETTER: Addressed to F. J. Weiner, transmitting a copy of the letter in item #130 above.	1/15/74	1	DAVID H. ALLARD, ALJ
136.	LETTER: Addressed to P. A. Greene, transmitting a copy of the letter in item #130 above and requesting Mr. Greene to inform the other protestant counsel of this.	" "	1	" " " "

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137.	NOTICE: Hearing in this proceeding has been continued to 2/20/74 at the Offices of the ICC, Washington, DC, before ALJ David H. Allard.	1/21/74	1	ROBERT L. OSWALD, Secretary
138.	LETTER: Transmitting Exhibit 105 which should be inserted in the docket. The transcript of the proceeding will show that the exhibit was introduced and received in evidence on 1/10/74, and temporarily withdrawn for the purpose of being typed and then resubmitted.	" "	1	FRANK J. WEINER
139.	COMMENTS	dated 1/22/74	2	ANGE PANAGOPOULOS
140.	LETTER: Advising of parties of the letter in item #130 above.	" " "	1	PETER A. GREENE
141.	COMMENTS	" " "	1	MR & MRS. M. TSCHIEMBER
142.	PETITION: For leave to intervene.	1/24/74	3	THE VILLAGE PLANNING BOARD OF THE VILLAGE OF GREENPORT (by J. J. Munzel)
143.	LETTER: Addressed to D. H. Allard, advising of the names of applicant's witnesses and the testimony and exhibits they will make available at the hearing scheduled 2/20/74.	dated 2/4/74	2	FRANK J. WEINER
143. 1	COMMENTS	dated 2/24/74	1	DONALD L. HUNTING

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144.	HEARING: For testimony adduced and accompanying exhibits entered during the hearing held 2/20/74, see Volumes 4 and 5 on page 38 of the document-index herein.	2/20/74	169	DAVID H. ALLARD, ALJ
145.	COMMENTS	" "	1	MRS. G. G. TYNAN
146.	LETTER: Transmitting the original Exhibit No. 115 which Judge Allard allowed the writer to temporarily withdraw for the purpose of reproducing same in sufficient copies for all parties.	3/3/74	1	FRANK J. WEINER
147.	LETTER: (copy of) Advising all parties of record of what specified witnesses testified about and of specified exhibits presented. Should they wish to cross-examine any of the witnesses referred to or on any of the exhibits referred to, they should notify ALJ D. H. Allard on or before 3/11/74. Should they desire to present surrebuttal evidence, they should give notice to the Commission and all parties on or before 3/18/74.	3/4/74	9	APPLICANT (by F. J. Weiner)
148.	COMMENTS	" "	1	HELEN KOESTLICH
149.	" "	3/5/74	2	MR. & MRS. GEORGE S. YOUNG
150.	" "	4/6/74	3	PATRICIA A. POOTERS

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151.	COMMENTS: In support.	3/11/74	2	MRS. RICHARD GROVES
152.	LETTER: Addressed to D. H. Allard, advising that there would be no need for further evidence to be offered on their behalf.	dated 3/18/74	2	NEW YORK STATE DEPARTMENT OF TRANSPORTATION (by J. C. McTriman)
153.	ORDER: That the record in this matter will closed as of 3/19/74; that briefs in this matter will be filed on or before 5/6/74.	3/26/74	1	DAVID H. ALLARD, ALJ
154.	ORDER: That the record in this proceeding is reopened for the purpose of receiving in evidence the described letter attached hereto for distribution to the parties.	" "	4	" " " "
155.	COMMENTS	4/4/74	2	LOUIS W. JENNEY
156.	COMMENTS	4/5/74	2	GEORGE ROLAND
157.	" "	4/10/74	1	GLORIA VALENTINE
158.	" "	4/11/74	2	KARL GROSSMAN; and JANET GROSSMAN
159.	" "	" "	1	RAYMOND H. DUMMENT
160.	" "	4/12/74	1	FRANK & MARGE STERN
161.	" "	" "	2	MRS. NANCE JAMESSEN
162.	" "	" "	1	MURIEL H. BROWN

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163.	COMMENTS	4/12/74	2	MR & MRS JOHN L. WELSCH
164.	" "	" "	1	JOHN J. NICHOLS, JR.
165.	" "	" "	1	MR. AND MRS. STEVEN MAGERAS
166.	" "	" "	2	MR. AND MRS. RALPH SMYLE
167.	" "	" "	2	ELSIE M. HICKS
168.	" "	" "	1	JOHN A. CRAFT
169.	" "	" "	1	G. S. MACDOWELL
170.	" "	" "	1	WILLIAM J. STEFFENS
171.	" "	" "	1	DELORES C. DEWOOL
172.	" "	4/17/74	1	TED & JENNIE GRABOWSKI
173.	LETTER: Addressed to J. P. King, requesting that the time for filing briefs be extended to 5/3/74.	4/18/74	1	APPLICANT (by F. J. Weiner)
174.	LETTER: Addressed to J. P. King, referring to the letter in the item next above and stating that inadvertently, the third paragraph of said letter reflected the extended time to be 5/3/74. It should have read 5/13/74.	4/19/74	1	" " " "
175.	COMMENTS	4/19/74	1	WALT CUCCI

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176.	TELEGRAM: Addressed to W. Batmen, requesting that the date for filing brief be extended to 5/13/74.	4/23/74	1	FRANK J. WEINER
177.	TELEGRAM: Addressed to F. J. Weiner, advising that the time for filing briefs has been extended to 5/13/74.	4/25/74	1	ROBERT C. GRESHAM, Commissioner Acting Chairman, Division One
178.	ORDER: That the date for filing of briefs has been extended to 5/13/74.	dated 4/25/74 (not served)	1	COMMISSIONER GRESHAM
179.	LETTER: (copy of) Advising all parties of the information in item #177 above.	4/25/74	2	FRANK J. WEINER
180.	COMMENTS	4/30/74	2	CLARA BUCHANAN
181.	LETTER: Addressed to R. C. Bamford, requesting that the due date for filing briefs be extended to 5/23/74.	" "	2	PETER A. GREENE
182.	ORDER: That the date fixed for filing of briefs is postponed to 5/23/74.	dated 5/1/74 (not served)	1	COMMISSIONER MURPHY
183.	LETTER: Addressed to R. C. Bamford, advising that all parties of record have been notified of the information in the item next above.	5/2/74	1	PETER A. GREENE
184.	BRIEF	5/21/74	54	APPLICANT (by F. J. Weiner)
185.	" "	5/23/74	59	NEW LONDON FREIGHT LINES, INC.; and BRIDGEPORT AND PORT JEFFERSON STEAMBOAT CO. (by P. A. Greene)
	END OF VOLUME 1	Pages:	3625	

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	VOLUME 1-A			
186.	MOTION: To strike or alternatively to reopen the record for receipt of additional evidence.	6/10/74	29	NEW LONDON FREIGHT LINES, INC.; and BRIDGEPORT & PORT JEFFERSON STEAMBOAT CO. (by P. A. Greene)
187.	LETTER: Addressedto R. Bamford, referring to their telephone conversation of 6/12/74, regarding certain newspaper articles concerning the status of this proceeding. The matter which bothers him is that somehow or other, certain individuals are receiving certain information and he is "left in the dark".	6/14/74	2	FRANK J. WEINER
188.	INITIAL DECISION: That the application be denied at this time, and that, this order shall be effective 30 days from 6/19/74.	6/19/74	16	DAVID H. ALLARD, ALJ
189.	COMMENTS	dated 6/20/74	2	STU GOODMAN
190.	LETTER: Addressed to P. A. Greene, referring to the motion in item #186 above, advising that the initial decision denied the application and in the circumstances, no useful purpose could be served by giving consideration to the motion. Accordingly, no further action will be taken thereon.	6/21/74	1	HENRY U. SNAVELY, Deputy Director, Section of Operating Rights
191.	COMMENTS	dated 6/24/74	2	HOWELL H. TOPPING
192.	U. S. CONGRESSIONAL INQUIRY	7/1/74	1	HONORABLE ROBERT H. STEELE

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193.	COMMENTS	7/5/74	1	THE SUFFOLK TIMES (by B. B. Dorman)
194.	LETTER: Responding to item #192 above.	" "	1	GEORGE M. STAFFORD, Chairman
195.	TELEGRAM: Addressed to J. P. King, requesting an extension to file exceptions to 8/19/74.	7/12/74	1	FRANK J. WEINER
196.	U. S. SENATE INQUIRY	7/15/74	1	HONORABLE JAMES L. BUCKLEY
197.	LETTER: Confirming the telegram in item #195 above.	" "	1	FRANK J. WEINER
198.	TELEGRAM: Addressed to F. J. Weiner, responding to the telegram in item #195 above and advising that the time for filing exceptions is extended to 8/19/74.	7/16/74	1	MICHAEL ERENBERG, Asst. Deputy Director, Sec. Operating Rights
199.	ORDER: That the time for the filing of exceptions is extended to 8/19/74.	dated 7/16/74 (not served)	1	COMMISSIONER GRESHAM
200.	U. S. CONGRESSIONAL INQUIRY	7/16/74	1	HONORABLE OTIS G. PIKE
201.	LETTER: (copy of) Advising all parties of the information in item #198 above.	7/22/74	1	FRANK J. WEINER
202.	LETTER: Responding to item #200 above.	7/23/74	1	GEORGE M. STAFFORD, Chairman
203.	LETTER: Responding to item #196 above.	" "	1	ROBERT L. OSWALD, Secretary
204.	U. S. SENATE INQUIRY	7/25/74	1	HONORABLE JACOB K. JAVITS
205.	LETTER: Responding to the item next above.	7/29/74	1	GEORGE M. STAFFORD, Chairman

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206.	LETTER EXCEPTIONS	8/16/74	1	MAURICE HARRISON
207.	EXCEPTIONS and PETITION: To reopen the record for receipt of additional evidence.	8/19/74	47	APPLICANT (by F. J. Weiner)
208.	U. S. CONGRESSIONAL INQUIRY	8/22/74	3	HONORABLE ROBERT N. GIAIMO
209.	" " " "	" "	1	HONORABLE JAMES R. GROVER, JR.
210.	LETTER: Responding to item #208 above.	8/29/74	1	JOSEPH M. HARRINGTON, Acting Secretary
211.	" " " " #209 "	" "	1	" " " "
212.	LETTER: Addressed to J. P. King, requesting that the due date for filing of replies to exceptions and petition in item #207 above, be extended to 9/30/74.	9/3/74	2	PROTESTANTS (by P. A. Greene)
213.	LETTER: Addressed to P. A. Greene, responding to the letter in the item next above and advising that the time for filing replies to exceptions has been extended to 9/30/74.	9/9/74	1	MICHAEL ERENBERG
214.	LETTER: Addressed to J. P. King, advising that copy of this letter he is advising all parties of record of the information in the item next above.	9/10/74	1	PETER A. GREENE
215.	U. S. SENATE INQUIRY	9/11/74	3	HONORABLE ABRAHAM RIBICOFF
216.	" " "	" "	1	HONORABLE LOWELL P. WEICKER, JR.

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217.	COMMENTS: In support	8/23/74	1	CHARLES J. MANN
218.	LETTER: Responding to item #215 above.	9/18/74	1	ROBERT L. OSWALD, Secretary
219.	" " " #216 "	" "	1	" " " "
220.	LETTER: In support.	9/24/74	2	TAMELA TRAYNARD, et al (and 26 other individuals)
221.	REPLY: To the exceptions and petition in item #207 above.	9/30/74	30	NEW LONDON FREIGHT LINES, INC.; and BRIDGEPORT AND PORT JEFFERSON STEAMBOAT CO. (by P. A. Greene)
222.	COMMENTS	dated 11/1/74	3	CAPTAIN EDWIN E. DAVIES
223.	" "	11/7/74	1	DOLORES LEAL; and JANICE M. CROOK
224.	LETTER: Responding to the comments in the item next above.	11/14/74	2	ROBERT J. BROOKS, Director
225.	LETTER: Responding to the comments in item #223 above.	" "	2	" " " "
226.	LETTER: Responding to the comments in item #222 above.	" "	2	" " " "
227.	U. S. CONGRESSIONAL INQUIRY	11/28/74	1	HONORABLE ROBERT N. GIAIMO
228.	LETTER: Responding to the item next above.	12/4/74	2	JOSEPH M. HARRINGTON, Acting Secretary
229.	COMMENTS	12/12/74	4	MR. & MRS. C. H. REHBEIN
230.	LETTER: Of inquiry.	12/16/74	1	ELLA GRASSO, GOVERNOR-ELECT, State of Connecticut

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231.	LETTER: Responding to the item next above.	12/19/74	2	GEORGE M. STAFFORD, Chairman
232.	U. S. SENATE INQUIRY	12/23/74	1	HONORABLE JAMES L. BUCKLEY
233.	LETTER: Responding to the item next above.	1/14/75	2	ROBERT L. OSWALD, Secretary
234.	U. S. SENATE INQUIRY	2/11/75	1	HONORABLE JAMES L. BUCKLEY
235.	LETTER: Responding to the item next above.	2/24/75	2	ROBERT L. OSWALD, Secretary
236.	U. S. CONCRESSIAONAL INQUIRY	6/4/75	1	HONORABLE ROBERT N. GIAIMO
237.	LETTER: Responding to the item next above.	6/11/75	1	JOSEPH M. HARRINGTON, Acting Secretary
238.	LETTER: In opposition.	6/14/75	2	E. HUGHES
239.	LETTER: Advising that the firm of Galland, Kharasch, Calkins and Brown has been retained as additional counsel for applicant.	8/5/75	1	ROBERT W. GINNANE
240.	LETTER: Addressed to R. L. Murphy, requesting the Commission to expedite its decision in this proceeding.	dated 8/5/75	3	APPLICANT (by R. W. Ginnane)
241.	LETTER: Addressed to R. W. Ginnane, responding to the letter in the item next above.	8/6/75	1	RUPERT L. MURPHY, Commissioner
242.	U. S. CONGRESSIONAL INQUIRY	10/6/75	2	HONORABLE OTIS G. PIKE
243.	" " " "	" "	3	HONORABLE FERNAND J. ST GERMAIN

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244.	LETTER: Responding to the item next above.	10/9/75	2	GEORGE M. STAFFORD, Chairman
245.	U. S. SENATE INQUIRY	10/16/75	1	HONORABLE CLAIBORNE PELL
246.	U. S. CONGRESSIONAL INQUIRY	10/20/75	1	HONORABLE EDWARD P. BEARD
247.	LETTER: Responding to item #242 above	10/21/75	2	ROBERT OSWALD, Secretary
248.	LETTER: Responding to tiem #245 above.	10/22/75	2	" " " "
249.	ORDER: That the petition in item #207 above is granted, and this proceeding is reopened for the purpose of receiving said evidence in the record and to accord consideration to related evidence in Docket No. W-1270 (Sub-No. 2TA); that subject to further Commission order, an evaluation should be required to be made on the record, as herein supplemented, in accordance with the NEPA of 1969, 42 U.S.C. 4321 et. seq., of the environmental effects if the proposed service; that this order shall be effective 10/22/75.	" "	2	DIVISION 1
250.	LETTER: Responding to item #246 above.	10/24/75	2	ROBERT L. OSWALD, Secretary
251.	COMMENTS	10/29/75	3	EDWARD W. EIBLEMAN
252.	MOTION: For substitution of party.	" "	7	CROSS-SOUND FERRY SERVICES, INC. (by P. A. Greene)

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253.	LETTER: Stating that the order in item #249 above implies that East End is no longer opposed to the application. On the contrary, it has always opposed this application on the ground of environmental impact on the Village of Greenport in general and the protestant in particular.	11/4/75	1	EAST END SUPPLY CO., INC. (by I. L. Price, Jr.)
254.	LETTER: Responding to the comments in item #251 above.	" "	2	ROBERT J. BROOKS, Director
255. 258	LETTERS (4): In opposition.	11/9/75	4	RICHARD A. CASSAR, et al. (and 3 other individuals)
259.	COMMENTS	11/10/75	1	GEORGE H. ROWSOM
260. 262.	LETTERS (3): In opposition.	11/11/75	3	ARLENE MARVIN, et al. (and 2 others)
263.	LETTER: Addressed to I. L. Price, Jr., responding to the letter in item #253 above.	" "	1	J. PATTERSON KING, Deputy Director Section of Operating Rights
264. 266.	LETTERS (3): In opposition.	11/12/75	3	ANN M. BURDEN, et al. (and 2 other individuals)
267.	COMMENTS	" "	1	EDWARD W. FEIBLEMAN
268.	LETTER: Addressed to A. J. Bacco, Real Estate Department, L.I. RR, requesting certain information concerning the status of the land at Greenport.	11/13/75	1	MICHAEL J. FALK, Attorney-Advisor Environmental Staff

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269. 270.	LETTERS (2): In opposition.	dated 11/13/75	2	FRANK FAGAN; and SHAREN DYBEMAN
271.	LETTER: Request a public hearing.	" " "	1	GEORGE H. ROWSOM
272.	LETTER: In opposition.	11/13/75	1	ROBERT G. HUGHES
273.	" " " "	11/14/75	1	" " "
274.	" " " "	dated 11/15/75	2	CUSTODIO BONDI
275.	" " " "	11/16/75	1	MURRAY WEITMAN
276.	" " " "	11/17/75	1	A. P. WHITE
277.	COMMENTS	" "	3	TOWN OF EAST HAMPTON (by J. Hope)
278.	LETTER: In opposition.	" "	1	WILLIAM ORR
279.	" " "	dated 11/18/75	1	ANTHONY SCHIAVONI
280.	LETTER: In opposition and requesting a public hearing.	11/18/75	1	EILIV M. NORVIK
281.	LETTER: In opposition.	dated 11/19/75	1	SERAFFINO BRANDI
282.	PETITION: For reconsideration and to reopen for receipt of additional evidence.	11/21/75	18	BRIDGEPORT & PORT JEFFERSON STEAMBOAT CO.; and CROSS-SOUND FERRY SERVICES, INC. (by P. A. Greene)
283.	LETTER: In opposition.	11/24/75	1	CHARLES H. LEIB

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284.	LETTER: Transmitting page 10 which was missing from the pleading in item #282 above.	11/28/75	1	PETER A. GREENE
285.	SUPPLEMENT: To the motion in item #252 above.	12/1/75	3	CROSS-SOUND FERRY SERVICES, INC. (by P. A. Greene)
286.	LETTER: Stating that it has recently been brought to his attention, that on or about 10/17/75, a hearing was held at the Commission's Office, Division 1, Wash., DC. He was never given any notice of such a meeting, or that any application had been made for a substitution or any change whatsoever.	" "	2	JAMES J. VAUGHN
287.	LETTER: Addressed to J. J. Vaughn, responding to the letter in the item next above, advising that the Session of the order of 10/17/75, does not refer to a hearing but to a Division vote on applicant's exceptions and petition to reopen the proceeding for receipt of additional evidence.	12/5/75	2	EDWARD J. SCHACK, Associate Director
288.	LETTER: In opposition.	12/10/75	1	PETER NATHANSON
289.	REPLY: To the petition in item #282 above.	12/12/75	5	APPLICANT (by J. F. Weiner)
290.	U. S. SENATE INQUIRY	12/23/75	1	HONORABLE CLAIBORNE PELL
291.	LETTER: Responding to the item next above.	1/2/76	2	ROBERT L. OSWALD, Secretary
292.	COMMENTS	1/26/76	8	CAPT. EDWIN E. DAVIES

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293.	LETTER: Responding to the comments in the item next above.	2/3/76	1	RUPERT L. MURPHY, Commissioner
294.	NOTICE: Summary of draft impact statement. Comments on this draft impact statement due 3/22/76.	" "	68	ROBERT L. OSWALD, Secretary
295.	COMMENTS	2/25/76	1	WILLIAM H. EWEN, JR.
296.	" "	3/7/76	2	EAST END SUPPLY CO., INC. (by I. L. Price, Jr.)
297.	" "	3/15/76	2	S. T. PRESTON & SON, INC. (by F. Fagan)
298.	" "	3/17/76	6	FIGHT THE FERRY (by J. M. Ely)
299.	" "	" "	1	STEPHEN DININIO
300.	" "	3/19/76	1	FRIENDS OF NOBSKA (by R. C. Cleasby)
301.	" "	dated 3/22/76	3	UNITED STATES DEPARTMENT OF THE INTERIOR (by R. S. Babb)
302.	" "	3/22/76	1	COUNCIL OF THE CITY OF NEW LONDON (by C. F. Driscoll)
303.	" "	" "	1	EDWIN E. DAVIES
304.	" "	" "	34	APPLICANT (by F. J. Weiner)
305.	" "	" "	20	CROSS-SOUND FERRY SERVICES, INC. (by P. A. Greene)

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306.	U. S. SENATE INQUIRY	3/23/76	1	HONORABLE JACOB K. JAVITS
307.	COMMENTS	" "	8	PLANNING BOARD OF THE VILLAGE OF GREENPORT (by J. Y. Richmond)
308.	" "	3/24/76	2	UNITED STATES COAST GUARD (by D. J. Riley)
309.	U. S. SENATE INQUIRY	3/25/76	1	HONORABLE EDWARD M. KENNEDY
310.	LETTER: Responding to the item next above.	3/26/76	1	GEORGE M. STAFFORD, Chairman
311.	COMMENTS	3/31/76	4	CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION; and THE CONNECTICUT DEPARTMENT OF TRANSPORTATION (by M. V. Sartori)
312.	LETTER: Responding to item #306 above.	4/2/76	1	ROBERT L. OSWALD, Secretary
313.	COMMENTS	4/5/76	3	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (by B. M. Metzger)
314.	" "	dated 4/20/76	2	STATE HISTORIC PRESERVATION OFFICER (by J. W. Shannahan)
315.	NOTICE: Summary Final Environmental Impact Statement.	6/11/76	132	ROBERT L. OSWALD
316.	COMMENTS	dated 7/23/76	3	DEPARTMENT OF TRANSPORTATION (by F. R. McCarron)
317.	" "	8/9/76	3	BOARD OF TRUSTEES, VILLAGE OF SAG HARBOR (by J. E. Schoen)

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318.	COMMENTS	8/13/76	6	CAPTAIN EDWIN E. DAVIES
319.	LETTER: Responding to the comments in the item next above.	8/23/76	1	ROBERT C. GRESHAM, Commissioner
320.	COMMENTS	9/21/76	1	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (by G. M. Hansler)
321.	" "	9/28/76	1	CITY OF NEW LONDON (by G. M. Podeszwa)
322.	U. S. SENATE INQUIRY	10/13/76	1	HONORABLE EDWARD W. BROOKE
323.	LETTER: Responding to the item next above.	10/22/76	1	ROBERT L. OSWALD, Secretary
324.	REPORT AND ORDER: That Cross-Sound Ferry Services, Inc. be substituted as protestant in lieu of New London Freight Lines, Inc.; that the petition in item #282 above is denied; that public convenience and necessity found to require operation by applicant, in interstate or foreign commerce, as a common carrier by water, by self-propelled vessels in the transportation of general commodities and passengers between the ports of New London, CT, and Greenport, L.I., NY. Issuance of a limited-term certificate approved upon compliance with certain conditions; that except to the extent granted, the application is denied; 90-day compliance required.	11/19/76	71	DIVISION 1

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325.	COMMENTS	12/1/76	1	ANN BURDEN
326.	" "	12/2/76	3	THERO JURGEUN
327.	U. S. CONGRESSIONAL INQUIRY	12/3/76	4	HONORABLE OTIS G. PIKE
328.	COMMENTS	12/9/76	1	DONALD J. PETRIE
329.	LETTER: Responding to the comments in the item next above.	12/15/76	1	ROBERT J. BROOKS, Director
330.	LETTER: Responding to item #327 above.	12/16/76	1	ROBERT L. OSWALD, Secretary
331.	PETITION: For reconsideration and to reopen for receipt of additional evidence.	12/17/76	1	SHELTER ISLAND AND GREENPORT FERRY COMPANY, INC. (by R. W. Tasker)
332.	PETITION: For leave to intervene.	" "	5	CHAMBER OF COMMERCE OF SOUTHEASTERN CONNECTICUT (by J. F. Regan)
333.	" " " "	" "	5	DOWNTOWN NEW LONDON ASSOCIATION (by J. F. Regan)
333.1	PETITION: For reconsideration.	" "	5	" " " " "
334.	" " " "	" "	12	CHAMBER OF COMMERCE OF SOUTHEASTERN CONNECTICUT (by J. F. Regan)
335.	PETITION: To intervene and reconsideration.	" "	102	ASSOCIATION OF BUSINESSMEN OF GREENPORT (by R. W. Tasker)
336.	PETITION: For leave to intervene.	12/20/76	5	ALFRED S. BICKNELL, OPERATOR OF THE FISHERS ISLAND FERRY (by J. F. Regan)
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337.	PETITION: For leave to intervene.	12/20/76	4	HARRY J. MITCHELL AND PAULINE MITCHELL (by R. E. DePetris)
338.	" " " "	" "	4	NELSECO NAVIGATION COMPANY (by R. P. Anderson, Jr.)
339.	PETITION: For reconsideration.	" "	9	BRIDGEPORT & PORT JEFFERSON STEAMBOAT COMPANY (by G. P. MacDougall)
340.	" " " "	" "	14	VILLAGE OF GREENPORT (by J. J. Munzel)
341.	" " " "	" "	9	NELSECO NAVIGATION COMPANY (by R. P. Anderson, Jr.)
342.	" " " "	" "	8	HARRY J. MITCHELL AND PAULINE MITCHELL (by R. E. DePetris)
343.	" " " "	" "	6	ALFRED S. BICKNELL, OPERATOR OF THE FISHERS ISLAND FERRY (by J. F. Regan)
344.	" " " "	" "	8	NEW YORK STATE DEPARTMENT OF TRANSPORTATION (by F. Goldfeder)
345.	" " " "	" "	31	CROSS-SOUND FERRY SERVICES, INC. (by P. A. Greene)
346.	" " " "	" "	6	EAST END SUPPLY CO., INC. (by I. L. Price, Jr.)

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347.	REPLY: To protestants' petitions for reconsideration and petitions for leave to intervene and reconsideration.	1/7/77	50	APPLICANT (by F. J. Weiner)
348.	LETTER: Stating that at page 23 of the reply in the item next above it is alleged that the petitions in item #'s 332 and 334 above were filed without authorization. The purpose of this letter is to state that such allegation is false.	1/23/77	1	JOSEPH F. REGAN
349.	LETTER: Stating that at page 18 of the reply in item #347 above is alleged that he had no authority to file the petition in item #335 above. This letter is to advise that such allegation is false.	1/27/77	1	ROBERT W. TASKER
350.	PETITION: Under rule 1100.101 to file supplemental reply to protestants' and intervenors' petitions for reconsideration and supplemental reply to petitions for reconsideration.	2/3/77	10	APPLICANT (by F. J. Weiner)
351.	MOTION: To strike.	2/8/77	12	CROSS-SOUND FERRY SERVICES, INC. (by P. A. Greene)
352.	LETTER: Transmitting news articles wherein they states that "no meeting of the association (Association of Businessmen of Greenport) had been held authorizing official action" and that the (cont'd)	2/14/77	3	FRANK J. WEINER

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352.	(continued) group had not authorized the action.			
353.	LETTER: Stating that their intent in retaining an attorney in this matter was not to oppose the application. The Board acted on the request of one of their members - Cross Sound Ferry Service, Inc. - and supported by many of the business leaders in the City of New London to request a hearing of all of the pertinent information now available.	2/18/77	1	CHAMBER OF COMMERCE OF SOUTHEASTERN CONNECTICUT (by W. E. Lockwood)
354.	LETTER: Transmitting additional copies of the letter in the item next above, and it should be noted that the petitions in item #'s 332 and 334 above were filed on the request of Cross Sound Ferry Service, Inc. This is the same Cross Sound Ferry Service Inc. which opposes the application.	2/28/77	17	FRANK J. WEINER
355.	LETTER: Advising that as of midnight, 2/28/77, there no longer exists a lease between the City and Mascony for the City Pier.	3/3/77	1	CITY OF NEW LONDON, CONNECTICUT (by C. F. Driscoll)
356.	ORDER: That the petitioners in item #'s 332, 333, 335, 336, 337 and 338 above are permitted to intervene; that this proceeding is reopened solely for the purpose of allowing applicant to submit additional evidence, as set forth (cont'd)	4/8/77	3	DIVISION 1, Acting as an Appellate Division, Commissioners Murphy, Gresham, and MacFarland, Commissioner Murphy concurring and Commissioner Gresham dissenting.

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356.	(continued) below, and protestants and interveners to reply; that 4/28/77, is fixed as the date on or before which applicant may submit additional evidence in the form of verified statements regarding docking, staging, and loading sites at Greenport, NY and New London, CT; and that 5/18/77, is fixed as the date on or before which protestants and interveners may submit verified statements in reply to such matters; that the petitions and motions in item #'s 331, 332, 333, 333.1, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 350 and 351 above in all other respects are denied and overruled, respectively.			
357.	VERIFIED STATEMENTS (8)	4/26/77	48	GEORGE R. POWER, et al (and 7 other individuals, representing applicant) (by F. J. Weiner)
358.	COMMENTS	5/11/77	1	PAULINE BUREK
359.	VERIFIED STATEMENT IN REPLY	5/17/77	71	RICHARD E. DePETRIS (representing Harry J. Mitchell and Pauline Mitchell)
360.	LETTER: Addressed to M. Erenberg, requesting an extension of time to and including 6/1/77, within which to reply to the statements in item #357 above.	5/18/77	2	AMTRAK (by P. R. Reilly)

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361.	VERIFIED STATEMENTS (2)	5/18/77	26	JOHN P. WRONOWSKI; and THOMAS DIMAGGIO (representing Cross-Sound Ferry Services, Inc.)(by P. A. Greene)
362.	" " " (3)	" "	51	JONATHAN Y. RICHMOND; JAMES MONSELL; and ROBERT G. HOLZMACHER (representing Village of Greenport) (by J. J. Munzel)
363.	VERIFIED STATEMENT	" "	7	FREDERICK GOLDFEDER (representing New York State Department of Transportation)
364.	REPLY STATEMENT	" "	4	EAST END SUPPLY CO., INC. (by I. L. Price, Jr.)
365.	VERIFIED STATEMENT	5/19/77	6	FRANK R. BECKWITH (representing Shelter Island and Greenport Ferry Company, Inc.) (by R. W. Tasker)
366.	" " "	" "	8	GEORGE H. ROWSOM (representing Association of Businessmen of Greenport) (by R. W. Tasker)
367.	TELEGRAM: Addressed to M. Erenberg, stating objecting to the request for an extension of time in item #360 above. Amtrak not even a party to proceeding.	5/20/77	1	FRANK J. WEINER
368.	LETTER: Addressed to P. R. Reilly, responding to the telegram in item #360 above, advising that the request is denied.	5/23/77	1	MICHAEL ERENBERG

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369.	U. S. CONGRESSIONAL INQUIRY	5/24/77	4	HONORABLE OTIS G. PIKE
370.	LETTER: Addressed to M. Erenberg, advising that by copy of this letter, he is informing all parties of record of the decision in the letter in item #368 above.	dated 5/25/77	1	AMTRAK (by P. R. Reilly)
371.	LETTER: Responding to item #369 above.	5/27/77	1	ROBERT L. OSWALD, Secretary
372.	REBUTTAL VERIFIED STATEMENT	6/2/77	10	GEORGE R. POWER (representing Applicant) (by F. J. Weiner)
373.	U. S. CONGRESSIONAL INQUIRY	" "	3	HONORABLE MILLICENT FENWICK
374.	PETITION: For leave to intervene and to file verified statement.	6/7/77	10	NATIONAL RAILROAD PASSENGER CORPORATION (by P. R. Reilly)
375.	LETTER: Responding to item #373 above.	6/9/77	1	A. DANIEL O'NEAL, Chairman
376.	MOTION: To strike or in alternative, reply to the petition in item #374 above.	6/13/77	4	APPLICANT (by F. J. Weiner)
377.	COMMENTS	6/14/77	1	STUART P. HOWELL, JR.
378.	ORDER ON FURTHER CONSIDERATION: That the verified statement in rebuttal tendered for filing in item #372 above is rejected; that the petition in item #374 above is denied, and that the verified stattment tendered for filing in item #374 above is rejected; that a certificate authorizing operation (cont'd)	6/16/77	4	DIVISION 1, Acting as an Appellate Division, Commissioners Murphy, Gresham, and MacFarland. (Commissioner Murphy did not participate)

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378.	(continued) in interstate or foreign commerce, as a common carrier by water, of general commodities and passengers by self-propelled vessels, between New London, CT, and Greenport, L.I., NY, should be granted to applicant subject to the condition that it shall be limited, in point of time, to a period expiring 3 years from its date of issue; that should applicant wish an extension of the certificate, it shall, within the 33rd month after issuance of the certificate, file a petition for its limited or permanent extension and demonstrate that it has been generally operating as it has proposed or under a more environmentally beneficial alternative, has endeavored to minimize adverse environmental impacts, and is in compliance with the IC Act; that in all other respects the application is denied; 90-day compliance required.			
379.	REPLY: To the pleading in item #376 above.	6/17/77	5	NATIONAL RAILROAD PASSENGER CORPORATION (by P. R. Reilly)
380.	LETTER: Follow-up response to item #373 above.	6/22/77	2	A. DANIEL O'NEAL, Chairman
381.	LETTER: Objecting to the order in item #379 above.	6/30/77	1	EAST END SUPPLY CO., INC. (by I. L. Price, Jr.)

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382.	U. S. CONGRESSIONAL INQUIRY	7/8/77	3	HONORABLE OTIS G. PIKE
383.	PETITION: For reconsideration.	7/12/77	14	CROSS-SOUND FERRY SERVICES, INC. (by P. A. Greene)
384.	LETTER: Responding to item #382 above.	7/14/77	2	H. G. HOMME, JR., Acting Secretary
385.	PETITION: For reconsideration.	7/15/77	6	NATIONAL RAILROAD PASSENGER CORPORATION (by P. R. Reilly)
386.	" " " "	" "	10	VILLAGE OF GREENPORT (by J. J. Munzel)
387.	LETTER PETITION: For reconsideration.	7/18/77	1	HARRY J. MITCHELL AND PAULINE MITCHELL (by R. E. DePetris)
388.	LETTER: In support of the petition in item #383 above.	" "	2	BRIDGEPORT AND PORT JEFFERSON STEAMBOAT COMPANY (by G. P. MacDougall)
389.	PETITION: For reconsideration.	" "	6	ASSOCIATION OF BUSINESSMEN OF GREENPORT (by R. W. Tasker)
390.	" " " "	" "	5	SHELTER ISLAND AND GREENPORT FERRY COMPANY, INC. (by R. W. Tasker)
391.	PETITION: For leave to intervene.	8/1/77	4	U. S. DEPARTMENT OF TRANSPORTATION (by R. K. James)
392.	PETITION: For leave to submit a late-filed document.	" "	18	" " " " "
393.	MOTION: To strike and in the alternative reply to protestants' petitions for reconsideration.	8/5/77	13	APPLICANT (by F. J. Weiner)

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394.	MOTION: To strike and reject the petition in item #391 above, and in the alternative reply to the petition in item #391 above.	8/8/77	12	APPLICANT (by F. J. Weiner)
395.	OPPOSITION: To the motion in the item next above.	8/26/77	4	NATIONAL RAILROAD PASSENGER CORPORATION (by P. R. Reilly)
396.	ORDER: That the motion in item #393 above is denied; that the petitions in item #'s 391 and 392 above are denied; that the motion in item #394 above is dismissed as moot; that the petitions and requests in item #'s 383, 385, 386, 387, 388, 389 and 390 above are denied; 90-day compliance required; that this order will be effective 15 days after 8/29/77.	8/29/77	3	DIVISION 1, Acting as an Appellate Division, Commissioners Stafford, Gresham, and Christian. Commissioner Stafford would permit the Department of Transportation to intervene and submit a late-filed petition.
397.	LETTER: Addressed to P. R. Reilly, advising that no formal action will be taken on the pleading in item #395 above as the pleading to which the reply is directed was directed was disposed of by order of 8/19/77 (item #396 above).	9/1/77	1	MICHAEL ERENBERG
398.	PETITION: For order declaring that an issue of general transportation importance is involved.	9/6/77	6	CROSS-SOUND FERRY SERVICES, INC. (by P. A. Greene)
399.	PETITION: To stay pending judicial review.	" "	6	" " " " "
400.	LETTER: Advising of compliance.	9/9/77	2	APPLICANT (by F. J. Weiner)

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401.	PETITION: For an order declaring that issues of general transportation importance are involved.	9/12/77	8	NATIONAL RAILROAD PASSENGER CORPORATION (by P. R. Reilly)
402.	NOTICE: A court action was instituted on or about 9/2/77, involving this proceeding before the U.S. Court of Appeals for the Second Circuit.	9/14/77	1	H. G. HOMME, JR., Acting Secretary
403.	ORDER: That the petitions in item #'s 398 and 401 above are denied.	9/22/77	1	BY THE COMMISSION. Chairman O'Neal and Commissioner Brown voted to deny the GTI petitions but would reopen the proceeding and accept and consider the petitions for intervention and DOT's petition for reconsideration. Commissioner Murphy voted to grant the petitions.
404.	ORDER: That the petition in item #399 above is denied.	" "	2	CHAIRMAN O'NEAL
	END OF VOLUME 1-B AND THIS PROCEEDING.	Pages:	604	
* * *	* *	* * * * * * * * *	* * *	* * * * * * * * * * * * * * * * * *
		TOTAL PAGES:	5064	

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	VOLUME 2				
	TRANSCRIPT OF TESTIMONY AND ACCOMPANYING EXHIBITS				
	PAGES	EXHIBITS IN EVIDENCE			
	1-153		10/29/73	N/A	DAVID H. ALLARD, ALJ
	154-297	51-52	10/30/73	N/A	" " " "
	298-490		10/31/73	N/A	" " " "
	491-739	1-50; 53-61	11/1/73	N/A	" " " "
	740-980	62-65	12/10/73	N/A	" " " "
	END OF VOLUME 2				
* * * *	* *		* * * * * * * * *	* * *	* * * * * * * * * * * * * * * * * *
	VOLUME 3				
	981-1344	66-71	12/11/73	N/A	" " " "
	1345-1528	72-79	12/12/73	N/A	" " " "
	1529-1732	79-85	12/13/73	N/A	" " " "
	1733-1925	87-92; 94	1/8/74	N/A	" " " "
	END OF VOLUME 3				
* * * *	* *		* * * * * * * * *	* * *	* * * * * * * * * * * * * * * * * *

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	VOLUME 4				
	TRANSCRIPT OF TESTIMONY AND ACCOMPANYING EXHIBITS				
	PAGES	EXHIBITS IN EVIDENCE			
	1926-2174	93; 95; 97-98	1/9/74	N/A	DAVID H. ALLARD, ALJ
	2175-2421	86; 99-107	1/10/74	N/A	" " " "
	2422-2563	108-115	2/20/74	N/A	" " " "
	HEARING CLOSED				
	Volume 4 also contains exhibits 1-61.				
	END OF VOLUME 4				
* * * *	* *		* * * * * * * * *	* * *	* * * * * * * * * * * * * * * * * *
	VOLUME 5				
	Volume 5 contains exhibits 62-116.				
	END OF VOLUME 5				
* * * *	* *		* * * * * * * * *	* * *	* * * * * * * * * * * * * * * * * *

DOCUMENT 118

No. 118

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT & FERRY SERVICE, INC.

PETITION OF THE DEPARTMENT OF TRANSPORTATION TO INTERVENE

By order of the Interstate Commerce Commission, a hearing was commenced in New London, Connecticut on October 29, 1973 on the petition of Mascony Transport & Ferry Service, Inc. for Interstate Commerce Authority to operate a ferry service between New London, Connecticut and Orient Point, Long Island, New York.

At the hearing, the Connecticut Department of Transportation, through Attorney William J. Lynch, sought permission to intervene for certain limited purposes. At that time, the Administrative Law Judges, with the approval of counsel for the applicant and the opponents, granted permission subject to the submission pursuant to rule 72 of a written memorandum.

The position of the Connecticut Department of Transportation is that the only access to the area which will be used as a Connecticut Port for the proposed ferry service is across a railroad crossing of the Boston to New York mainline tracks of the Penn Central Railroad Company. At the present time, this crossing, known as DeNoia crossing, is a private crossing with limited usage. Utilizing this crossing for these purposes, as described by the Mascony petition, would greatly increase the volume of traffic across this grade crossing, making it in effect a public grade crossing.

The Connecticut Department of Transportation feels that this could create a very serious hazard to the members of the traveling public utilizing this grade crossing to avail themselves of the proposed ferry service. Under Connecticut Laws (Connecticut General Statutes 16-97, 16-100 et al), the establishment of public grade crossings is prohibited in Connecticut. In addition, the Federal Government, acting through the U. S. Department of Transportation, has carried out an extensive program aimed at the elimination of grade crossings over railroad tracks, especially mainline tracks, such as encountered in this hearing. We therefore strongly urge that any action by the Interstate Commerce Commission on this petition be predicated upon the establishment of a safe means of access to the proposed ferry terminal in New London, Connecticut.

As stated at the hearing, the Connecticut Department of Transportation petition to intervene in this matter is only for the purpose, as set forth above. The intervenor do not propose to introduce any witnesses or offer any additional testimony in this matter.

For the foregoing reasons, the Department respectfully requests that its petition to intervene be granted, as it was orally, at the hearing on October 29, 1973.

Respectfully submitted,

STATE OF CONNECTICUT

William J. Lynch
Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document on all parties to these proceedings.

William J. Lynch
Counsel

Dated this 31st day of October,
1973, in Hartford, Connecticut

DOCUMENT 147

No. 147

FLASH, WEINER & ATHAS
ATTORNEYS AT LAW, INC.
15 COURT SQUARE
BOSTON, MASSACHUSETTS 02108

MALCOLM H. FLASH
FRANK J. WEINER
ROBERT L. ATHAS
WESLEY S. CHUSED

AREA CODE 617
523-6511
742-3530

March 1, 1974

To: All Parties of Record

Re: Mascony Transport and Ferry Service, Inc.
Docket No. W-1270

Gentlemen:

The hearing in the above-entitled matter was resummed at the offices of the Interstate Commerce Commission, Washington, D.C. on Wednesday, February 20, 1974.

Pursuant to the directive of Administrative Law Judge David H. Allard, you are hereby advised of the following:

1. William J. Miller, Jr., Director, The Delaware River and Bay Authority appeared, testified, and submitted as part of his testimony, a prepared statement received in evidence as Exhibit No. 108.

   In general, Mr. Miller testified in relation to his meetings and conversations with J. Brent Lynch of New London Freigh Lines, Inc., the fuel consumption of the S. S. New Jersey, the cost of repairs of the S. S. New Jersey while the S. S. New Jersey was in the possession of and under the ownership of The Delaware River and Bay Authority, the ferry revenues of the Delaware River and Bay Authority, and matters pertaining to the purchase of shallow draft vessels by The Delaware River and Bay Authority to replace the vessel sold to Mascony Transport and Ferry Service, Inc. and those vessels that are under contract to be sold to Mascony Transport and Ferry Service, Inc.

   In addition to the data shown in Exhibit No. 108, Mr. Miller further (1) testified to the relationship of Luther Blount in connection with The Delaware River and Bay Authority's desire to purchase and/or secure shallow draft vessels; (2) testified in connection with Mr. Blount's conversation with Mr. Miller concerning the possible purchase of the S. S. New Jersey for the MacAllister interests, and (3) testified to the contents of a meeting with Mr. Blount in New York City with a certain Mr. Tiedermann.

Mr. Miller further testified with respect to a South American interest which had initially contracted to purchase the S. S. New Jersey but was ultimately unable to meet the financial obligation and which resulted in the sale of the vessel S. S. New Jersey to Mascony Transport and Ferry Service, Inc.

Mr. Miller further testified that the primary reason for the sale of the S. S. New Jersey and its other vessels was due to its desire to secure shallow draft vessels to overcome the severe dredging problem and dredging costs that The Delaware River and Bay Authority has been experiencing.

2. George Power, President, Mascony Transport and Ferry Service, Inc. also testified on Wednesday, February 20, 1974.

Mr. Power introduced into evidence, a letter from MOAC (Marine Office - Appleton and Cox Corporation) which was received into evidence as Exhibit No. 109. Said Exhibit 109 pertains to the cost of insurance of the S. S. New Jersey.

Mr. Power further testified in relation to the Coast Guard Regulations, 46 C.F.R. Parts 78-40 and in particular 46 C.F.R. Parts 78.40-1. The subject part of the Coast Guard regulations pertains to the stowage of vehicles on vehicular ferries and are reflected on a document received into evidence as Exhibit No. 110. Said Exhibit No. 110 was in connection with the rebuttal of New London Freight Lines, Inc.'s evidence with respect to "egress" from motor and/or passenger vehicles while they are on the New London Freight Lines, Inc.'s ferries.

Mr. Power repeated his prior statement made at Greenport, Long Island to the effect that the S. S. New Jersey could not have been brought to Greenport, Long Island during the December, 1973 and January, 1974 hearings since Mascony Transport and Ferry Service, Inc. had not received the appropriate documentation from the United States Coast Guard. Mr. Power had, in the hearing room, at Washington, D.C., on Wednesday, February 20, 1974, the appropriate documentation from the U.S. Coast Guard which was dated January 17, 1974 and endorsed on February 1, 1974. Thus, Mr. Power was able to show that the appropriate documentation which would have enabled Mascony Transport and Ferry Service, Inc. to bring the S. S. New Jersey to Greenport, Long Island at either the December, 1973 or January, 1974 hearings had not been forwarded to Mascony Transport and Ferry Service, by the U. S. Coast Guard until February, 1974, and at a time after the hearings at Greenport, Long Island.

Mr. Power further testified in relation to the Coast Guard Regulations, 46 C.F.R Parts 72.25-15 which pertain to the number of toilets on the vessel.

The S. S. New Jersey has a total of four rest rooms.

In the ladies' lounge, on the main deck, there are three toilets and three wash basins.

In the ladies' lounge, on the after deck, there are one toilet and one wash basin.

In the men's lounge, on the main deck, there are three toilets, three urinals and four wash basins.

In the men's lounge, on the after deck, there are one toilet and one wash basin.

In addition, there are additional facilities for the crew, such consisting of four toilets and three wash basins in the forward part of the S. S. New Jersey.

In total, there are, on the S. S. New Jersey, twelve toilets, three urinals, and twelve wash basins.

Based on the Coast Guard Regulations of ferry vessels with a capacity of 500 to 1,000 passengers, the S. S. New Jersey meets the Coast Guard regulations as it has four toilets and four wash basins for ladies, four toilets and five wash basins for men, and an additional four toilets and three wash basins for its crew.

Mr. Power further testified with respect to the docking facilities at New London, Connecticut and Greenport, Long Island. There were received into evidence, documents identified as Exhibit Nos. 111 and 112. Exhibit No. 111 pertains to the cost of the installation of pilings as dolphins at New London, Connecticut. Exhibit No. 112 pertains to the cost of the installation of pilings as dolphins at Greenport, Long Island.

Exhibit Nos. 111 and 112 were presented to rebut the cost data of such installations presented by J. Brent Lynch of New London Freight Lines, Inc. at the Greenport, Long Island hearings.

Mr. Power further testified with respect to the property known as the Long Island Railroad property and his meetings with Walter Schlager, President of the Long Island Railroad in connection with the securing of such propertie for a docking site at Greenport, Long Island. Mr. Power stated that Mr. Schlager had stated to him that negotiations were being carried on by and between the Long Islan Railroad and the Village of Greenport, and the Long Islan Railroad could not entertain any further negotiations with Mascony Transport and Ferry Service, Inc. Mr. Power further stated that in view of the negotiations with the Village of Greenport, and the testimony of Gerald King of the Greenport Planning Board, to the effect that the terms of the Long Island Railroad were not acceptable, Mascony Transport and Ferry Service, Inc. was forced to enter into further negotiations with Advine Realty Corp. Such further negotiations resulted in the execution of a lease, on February 16, 1974 and a copy of such lease was received into evidence as Exhibit No. 113. In genera Exhibit No. 113 indicates a lease of the properties at Greenport, Long Island. Attached to the lease as Schedule "A" thereto is a map depicting the enlarged are at the Greenport, Long Island site. In particular, it should be noted, that under the lease as reflected in Exhibit No. 113, Mascony Transport and Ferry Service, Inc will be securing additional land area which will also include a certain portion of the present unfinished banquet hall which will be removed by Mascony Transport and Ferry Service, Inc. Such portion to be removed will allow for a driveway of 55 feet in width and appears to satisfy one of the objections of the New York Department of Transportation.

In addition, the leased and additional area, will allow the docking of the vessel to the right of that area as presently shown on Exhibit No. 81.

There was received into evidence, a map, as Exhibit No. 114. Said Exhibit No. 114 had as its source, Exhibit No. 81. Exhibit No. 114 depicts the driveway of 55 feet wide, depicts the vessel S. S. New Jersey docking further to the right, thus eliminating the protrusion of 30 feet of the vessel as now shown in Exhibit No. 81.

Exhibit No. 114 further shows that the distance between the area used by the Shelter Island Ferry and the stern of the S. S. New Jersey (as shown in Exhibit No. 114) will continue to remain the same as the Shelter Island Ferry now has available to it. In addition, the enlarged area at the site would also be sufficient to accomodate 50 automobiles.

The plan in Exhibit 114 refers to the identical site of the docking facilities at Greenport, Long Island as shown in the prior Exhibit, namely Exhibit No. 81.

3. Kurt Jensen, President of Advine Realty Corp. testified and acknowledged his signature on the lease agreement received into evidence as Exhibit No. 113. Mr. Jensen further stated that in order to remove the portion of the unfinished banquet have as reflected in Schedule "A" to Exhibit No. 113, approval from the first mortgagee would have to be securred and that he had received such approval, orally.

4. Captain Edwin Davies originally testified at New London, Connecticut on Thursday, November 1, 1973 and also testified at Washington, D.C. on Wednesday, February 20, 1974. Captain Davies' evidence pertained to docking the vessel S. S. New Jersey at Greenport, Long Island. Captain Davies assisted George Power in preparing the chart known as Exhibit No. 114 based on the area being

leased from Advine Realty Corp. as reflected in Schedule "A" to Exhibit No. 113. Exhibit No. 114 was also prepared from scaled models of the S. S. New Jersey and vessels operated by the Shelter Island Ferry.

Captain Davies personally observed the facilities at Greenport, Long Island and viewed the operations of the Shelter Island Ferry on Saturday, February 16, 1974, by air and on land. Captain Davies expressed his opinion that there would be no problem in manuvering the S. S. New Jersey in entering and leaving the docking facilitie at Greenport, Long Island as reflected on Exhibit No. 11

In addition Captain Davies secured Coast and Geodetic Map No. 363, published by the United States Department o Commerce which pertains to certain sections of Long Isla Captain Davies caused to be prepared a "blow up" chart o the Greenport, Long Island section and, prepared to scal the vessels known as the S. S. New Jersey and the vessels operated by the Shelter Island Ferry. The "blow up" chart was received into evidence as Exhibit No. 115. Captain Davies secured the dimensions of the Shelter Island ferries from the United States Coast Guard

Captain Davies testified that while the S. S. New Jersey would be in dock it would afford protection to the Shelter Island ferries by giving lee to the Shelter Island ferries. In other words, the Shelter Island ferries would be in the shelter of, and be protected by the S. S. New Jersey while the S. S. New Jersey was docked.

Captain Davies further indicated on the "blow up" of the particular portion of Coast and Geodetic Survey Map 363, the general routes of the S. S. New Jersey and the Shelter Island ferries, the latter being based on his own personal observance of the operation of the Shelter Island ferries from the air and ground.

In addition, Captain Davies testified that the S. S. New Jersey would not dominate the harbor as contended by parties opposed to the Mascony application.

Captain Davies stated that there should not be any difficulty whatsoever in communicating with the Shelter Island ferries to prevent mishaps. Captain Davies further testified that communications between vessels are mandatory through either Channel 13 or Channel 16 and that the route proposed to be utilized by the S. S. New Jersey and the route presently utilized by the Shelter Island ferries never cross.

Captain Davies further testified that he had read the transcript and in particular, the testimony of Charles Harris, one of the captains of the Shelter Island - Greenport Ferry Company. Captain Edwin Davies testified on the matter which resulted in his bringing a vessel into Greenport, Long Island approximately 20 years ago. Captain Davies testified that he was originally requested to board a freighter that would be coming through the Cap Cod Canal, was informed that the freighter would be approximately 200 feet long, and to captain the vessel into Greenport, Long Island. When the vessel arrived, at the Cape Cod Canal, it was then ascertained that the vessel was not 200 feet in length, but rather, 421 feet in length with a beam of 25 feet and a draft of 16 feet.

Captain Davies, in bringing the vessel into Greenport, Long Island did not drop an anchor astern as stated by Captain Harris. Rather, Captain Davies did drop an anchorin order to allow him to control the vessel due to its excessive length. Captain Davies vehemently denied knocking down pilings at the dock as mentioned by Charles Harris. The vessel further extended beyond the dock and in order to unload cargo in Hatch No. 4, the owners of the vessel contracted with the Shelter Island - Greenport Ferry for use of their ferries in unloading the cargo in the form of a lighterage service from Hatch No. 4 which extended beyond the dock.

Captain Davies further testified that after having read all of the testimony of Captain Harris, he disagreed vehemently with Captain Harris. Captain Davies testified that in view of the testimony of Captain Harris that he, Captain Davies, in his position as the captain of the S. S. New Jersey would "want to stay clear of Captain Harris".

It was Captain Davies' opinion that the operation of the Shelter Island - Greenport Ferry is a simple operatio and there should not be any difficulty by a well qualifie seaman in manuvering a Shelter Island ferry vessel with a beam of 30 feet (such as those owned and operated by the Shelter Island - Greenport Ferry) through a passage way of 170 feet as reflected on Exhibit No. 114.

Captain Davies further expressed his opinion that in view of the testimony of Charles Harris that such evidenc of Charles Harris should be presented to the United State Coast Guard in view of Charles Harris' statements that he has virtually no control over the Shelter Island ferry vessel because of its forward propeller, its stern propeller, and not enough rudder which cause the Shelter Island ferries to come into Greenport Harbor and its ferry slip "on a crab fashion".

Captain Davies had in the hearing room on February 20, 1974 United States Coast and Geodetic Survey charts depicting the directions of the tides at Greenport Harbo and, based on such data produced by the United States Department of Commerce in its Coast and Geodetic Survey charts, the directions were completely different from those mentioned by Charles Harris.

There are enclosed herewith, copies of Exhibit Nos. 108, 109, 110, 111, 112, 113, 114 and 115.

Should you desire to cross-examine any of the witnesses referred to above on any of the matters testified to by the above witnesses, or on any of the exhibits referred to above and which are enclosed herewith, you should notify Administrative Law Judge David H. Allard and the Interstate Commerce Commission on or before March 11 1974 of your desire to do so. You should state the names of those witnesses you desire to cross-examine, the reasons for such cross-examination, and forward to all parties to this proceeding, copies of your request and reasons for cross-examination.

You are further notified, pursuant to a directive from Administrative Law Judge David H. Allard, that should you desire to present surrebuttal evidence, you give notice of such to Administrative La Judge David H. Allard, the Interstate Commerce Commission, and all parties of record, on or before March 18, 1974, of your intent to present surrebuttal evidence, the names of the witnesses you intend to call for surrebuttal, and a short statement indicating the evidence to be presented by such witness.

Very truly yours,

Frank J. Weiner

Frank J. Weiner

FJW/cb
Enclosures

cc: David H. Allard
Administrative Law Judge
Interstate Commerce Commission
Washington, D. C. 20423

Secretary, Interstate Commerce Commission
Washington, D. C. 20423

DOCUMENT 153

No. 153

RECEIVED
MAR 29 1974
MALCOLM H. FLASH

OH

INTERSTATE COMMERCE COMMISSION

ORDER

SERVICE DATE
MAR 26 1974

No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.

It appearing That at the hearing in this matter at Washington, D. C. on February 20, 1974, all parties who did not appear at the hearing, at which time applicant submitted rebuttal evidence, were to notify the Commission[1] by March 11, 1974, of any request to cross-examine such witnesses thereat;

It further appearing That at said hearing all parties opposing the granting of the application were to request an opportunity to submit surrebuttal evidence on or before March 18, 1974;[2]

And it further appearing That the dates of March 11, 1974, and March 18, 1974 have passed without requests for the submission of further cross-examination or additional evidence;

Accordingly,

It is ordered, That the record in this matter will be closed as of March 19, 1974;

And it is further ordered That briefs in this matter will be filed on or before May 6, 1974.

Dated at Washington, D. C., this 19th day of March 1974.

By the Commission, David H. Allard, Administrative Law Judge.

ROBERT L. OSWALD

Secretary

(SEAL)

---

[1] Transcript, page 2,559.

[2] Transcript, page 2,560.

DOCUMENT 154

No. 154

OH

INTERSTATE COMMERCE COMMISSION

SERVICE DATE

MARCH 26 74

ORDER

No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.

It appearing, That by registered letter dated March 14, 1974, the chairman of the Village of Greenport Planning Board restated its position in this matter in the light of the rebuttal evidence adduced at the hearing on February 20, 1974, but that the letter was not received by the Administrative Law Judge until March 20, 1974;

Accordingly,

It is ordered, That the record in this proceeding be, and it hereby is reopened for the purpose of receiving in evidence the above described letter which will be attached hereto for distribution to the parties.[1]

Dated at Washington, D. C., this 20th day of March, 1974.

David H Allard

By the Commission, David H. Allard, Administrative Law Judge.

ROBERT L. OSWALD

(SEAL) Secretary

RECEIVED

MAR 29 1974

---

[1] The letter is marked and received in evidence as Exhibit No. 116.

Officers

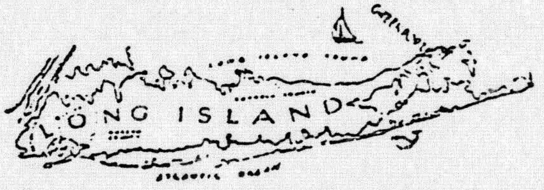
MAYOR
DAVID E. WALKER

TRUSTEES
HENRY CARLOZZI
SAMUEL KATZ
WILLIAM H. LIEBLEIN
WILLIAM QUINN

CLERK
John Peckham

Village of Greenport

INCORPORATED 1838
NEW INCORPORATION APRIL 7, 1868
RE-INCORPORATION UNDER GENERAL LAW MAY 28, 1894



Greenport, Suffolk County, N. Y.

Exhibit [illegible]
March 20, 1974
[illegible]

March 14, 1974

Hon. David H. Allard
Administrative Law Judge
Interstate Commerce Commission
Washington, D. C. 20423

Re: Mascony Transport and Ferry Services, Inc.
Surrebuttal - due March 18, 1974

Dear Judge Allard:

In general, the Mascony Transport and Ferry Service, Inc. has complied with most of the objections that the Village of Greenport Planning Board submitted into the record on January 10, 1974.

We feel confident that Mascony has every intention of working in a cooperative manner with the Village.

We have reviewed the paper work of Flash, Weiner and Athas, Docket No. W-1270 and the proposed lease between Advina Realty and Mascony dated February 16, 1974.

We have noted that Mascony has improved their proposed operation in Greenport.

We have also noted that the McAllister Ferry has not posted a schedule for ferry operation as of March 14, 1974.

We still have two (2) areas of concern and we feel sure Mascony will make every effort to meet these problems in a good workable manner.

1). Even though the 16 foot alley now may become a 55 foot egress and ingress, the Mascony Ferry would be placing a large volume of traffic on our main business artery. We will still leave our objection in the record about the amount of traffic placed on Front Street at the proposed location. We hope the Judge will insist that traffic might be rerouted in another direction.

2). Advine Reality has not received in writing a proper document for permission from the mortgage holder to remove any part of the unfinished banquet hall.

We find at this point in time to remove all previous objections except the two stated above and appeal to the Judge and Mascony for the greatest amount of cooperation.

This action was taken at a special meeting of the Planning Board on March 14, 1974.

Very truly yours,

Gerald C. King, Chairman
Village of Greenport Planning Board

GCK:nc

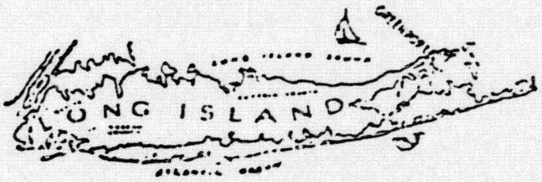
Officers

MAYOR
DAVID E. WALKER

TRUSTEES
HENRY CARLOZZI
SAMUEL KATZ
WILLIAM H. LIEBLEIN
William Quinn
CLERK
John Peckham

Village of Greenport

INCORPORATED 1838
NEW INCORPORATION APRIL 7, 1868
RE-INCORPORATION UNDER GENERAL LAW MAY 28, 1894



Greenport, Suffolk County, N. Y.

Planning Board Meeting

March 14, 1974

WAIVER OF NOTICE

I, hereby waive notice of this Special Meeting being held this date, March 14, 1974.

Gerald C King
Gerald King, Chairman

James I Monsell
James I. Monsell

Richard Manwaring
Richard Manwaring

William Mills

Joseph Townsend, Jr.

A motion was made by Richard Manwaring and seconded by William Mills that the attached letter be sent to the Interstate Commerce Commission concerning Mascony Transport and Ferry Service, Inc.'s request for a franchise to operate a ferry service in Greenport. This surrebuttal letter to be sent before March 18, 1974.

DOCUMENT 184

BEFORE THE

INTERSTATE COMMERCE COMMISSION

IN THE MATTER OF

MASCONY TRANSPORT AND FERRY SERVICE, INC.

DOCKET NO. W-1270

****

BRIEF OF

MASCONY TRANSPORT AND FERRY SERVICE, INC.
(Applicant)

****

Due Date:

May 23, 1974

Applicant's Representatives:

Frank J. Weiner
Malcolm H. Flash
Attorneys at Law
15 Court Square
Boston, Massachusetts 02108

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BEFORE THE
INTERSTATE COMMERCE COMMISSION
IN THE MATTER OF
MASCONY TRANSPORT AND FERRY SERVICE, INC.
DOCKET NO. W-1270

****

BRIEF OF
MASCONY TRANSPORT AND FERRY SERVICE, INC.
(Applicant)

****

I

Now comes Mascony Transport and Ferry Service, Inc., hereafter referred to applicant, and files this brief in the above-entitled proceeding.

II

PRELIMINARY STATEMENT

By application filed May 29, 1973, applicant seeks authority to engage in operation, in interstate or foreign commerce, as a common carrier by water, in the transportation of general commodities and passengers, by self-propelled vessels, between the ports of New London, Conn., and Greenport, Long Island, N. Y.

The application was assigned for hearing before Administrative Law David H. Allard. Hearings were held before the Administrative Law Judge at New London, Connecticut on October 29, 30, 31 and November 1, 1973; at Greenport, Long Island, N. Y. on December 10, 11, 12, and 13, 1973; at Greenport, Long Island on January 8, 9, 10, 1974; and at Washington, D. C. on February 20 1974.

New London Freight Lines, Inc., hereafter referred to as NLFL and The Bridgeport and Port Jefferson Steamboat Company, hereafter referred to as BPJS, and collectively referred to hereafter as protestants, appeared in opposition.

The Connecticut Department of Transportation, hereafter referred to as CDOT, The New York Department of Transportation, hereafter referred to as NYDOT, East End Supply Co., Inc., hereafter referred to as East End, The Shelter Island and Greenport Ferry Co., Inc., hereafter referred to as Shelter Island Ferry, and The Village Planning Board of the Village of Greenport, hereafter referred to as Greenport Planning Board, were permitted to intervene at various stages of the proceeding.

III

APPLICANT

Applicant is a Massachusetts organization, organized under the laws of the Commonwealth of Massachusetts on February 15, 1973 (R 11)(Ex 1). Applicant's president, several directors and stockholders have had and/or are engaged in extensive water transportation operations, including prior Coast Guard experience mechanical, tugboat, passenger, and varied marine occupations. Applicant's president was formerly employed by NLFL. Certain directors and stockholders of applicant are certified sea captains, currently employed, and certified as competent to serve as masters of steam and motor vessels of any gross tons. (R 13-26) (R 301-322)(R 637-665)(Exhibits 2, 3, 5, 6).

At time of hearing at New London, Connecticut, applicant's balance sheet showed assets of $114,145.93 in cash, real estate of $203,000.00, a vessel (S. S. New Jersey)(subsequently to be renamed S. S. Greenport) of $376,417.00, deposit on three other vessels of $50,000.00, and other assets, totalling $878,000.00. Its liabilities total $550,000.00 with stockholder's equity of $328,000.00 (Ex 4).

The concept of the proposal of applicant is that of its president, who was formerly employed by NLFL. During such employment, he observed the excessive waiting times, the vessels operated by NLFL between New London, Conn., and Orient Point, L. I., and became aware of and concerned of a need for additional service.

Applicant's president, upon his termination of employment with NLFL, undertook to cause applicant to be incorporated and ultimately was sucessful in locating a vessel for the proposed use of a ferry operation between New London, Connecticut and Greenport, Long Island, a distance of approximately 22 miles (Exhibits 7, 8).

Eighy-nine photos were introduced at the hearing by applicant's president, such photos depicting the loading and/or unloading conditions, the extreme lines of automobiles with passengers, facilities of NLFL and its vessels, which were described as World War II LSM Landing Craft (R 32-60)(Exhibits 9-16).

Ultimately, applicant through the efforts of its president, negotiated for the purchase of the S. S. New Jersey from The Delaware River and Bay Authority for the sum of $350,000.00. (R 60-66)(Exhibits 17-22). The S. S. New Jersey, 350 feet in length, was originally built in 1936, lengthened and modernized in 1954, and refurbished in 1964. It has a carrying capacity of 100 automobiles, a mixed load of 85 cars, trucks and trailers, a licensed passenger capacity of 800, is equipped with a dining room and lunch counter, and has a gross tonnage of 2,360 tons with a net tonnage of 1,259 tons (R 66-68)(Exhibits 23,26).

Applicant has also entered into an agreement with The Delaware River & Bay Authority for the purchase of three additiona vessels known as the S. S. Delaware, S. S. Cape May and M. V. Cape Henlopen (R 68-72)(Exhibits 25, 27, 28, 29, 30). Generally, these latter three vessels are of the same size and/or capacity as the S. S. New Jersey (R 71-73).

Applicant has entered into certain agreements for the purchase of waterfront property at New London, Connecticut and such property will accomodate 213 automobiles (R 73-76, 80) (Exhibits 31-33). It has met with the CDOT, Bureau of Waterways, the City of New London, Connecticut and Connecticut Department of Environmental Protection. Applicant's proposal had met with the approval of the officials of each of those agencies and cities, subject to the correction and/or taking of steps concerning grade crossings. (R 77-81)(Exhibits 35-36).

Applicant had also entered into various purchase and sale agreements concerning properties at Greenport, Long Island. Such agreements pertain to several parcels which are to be used in connection with the loading, unloading and parking facilities at Greenport, Long Island. (R 82-89)(Exhibits 37-45, 91, 92)(R 2484-2488) (R 2529-2532)(Ex 113).

Applicant's president stated that there is no service between New London, Connecticut and Orient Point, Long Island during the first three months of the year. Under applicant's proposal, there would be a year-round service, with the projection of one round-trip per day from January through the first part of May and more if necessary; from the first part of May through the end of July, two round-trips per day; from the end of July through the end of September, four round-trips per day; and the remainder of the year as needed or similar to the Spring period of the year. (R 94-95).

Applicant projected that there was an untapped source of passenger and vehicular traffic during the early part of the year in connection with the movement of seed-potato trailers from points in Maine to eastern Long Island and a further untapped movement of a joint motor-water-motor freight traffic, primarily an intermodal system of transportation between the points involved. (R 94-96).

Applicant projected an overall gross income with one vessel of $1,333,149.40 with expenses of $657,876.00 (R 96)(Exhibits 56-60).

Applicant introduced into evidence, a copy of the report of the Connecticut Department of Transportation, Bureau of Planning and Research, which reached the conclusion that (a) the CDOT has the authority to assist in the upgrading of ferry operations; (b) peak summer demand was not always satisfied during past years; (c) present summer service is definitely inadquate to meet demand; (d) New York residents use the ferry service more than Connecticut residents by a four to one ratio; (e) New York's economic benefit from the present service is three times that of Connecticut; (f) I.C.C. certification does not require any frequency or level of service; (g) federal programs exist for upgrading ferry service; and the final recommendation that (h) contingent upon New York DOT's participation that separate meetings be held with the ferry operator (NLFL), U.S. DOT, I.C.C. and the Maritime Administration to discuss all possible means of improving ferry service.(R 96-97)(Ex 47).

Applicant has been assured from various labor unions that should it require personnel, such can be furnished. (R 98-99) (Exhibits 98, 49). Applicant feels that with its present stockholders and officers, it has sufficient personnel to properly man one vessel. (R 97). Applicant also presented evidence of insurance (although not required under Part 3 of the Interstate Commerce Act) and appropriate docking plans for New London,

7

Connecticut and Greenport, Long Island. (Exhibits 54, 61, 80, 81, 82, 83, 114 and 115).

IV

PUBLIC WITNESSES

Applicant presented more than 100 witnesses in support of the application. These witnesses, with a variety of backgrounds and occupations, consisted of housewives, attorneys, a union representative, a newspaper publisher, a registered nurse, a licensed practical nurse, businessmen, a plumbing and heating contractor (Mayor of Groton, Conn.), Clerk of City of Groton, Conn. and realtor, an insurance agent, a high school student, retirees, advertising executives, fishermen, real estate brokers, Catholic Priests, a hotel desk clerk, the code enforcement director of the City of New London, Conn., several motor carrier operators both certificated and exempt carriers, a salesperson, an Episcopal Priest, potato farmers, stock brokers, a retired school principal, private carriers, gas station owners, motel owners, college personnel, potato shippers, a fertilizer shipper, a business association, a school teacher, a retired naval comander, a truck driver, physicians, adjusters, a town supervisor, a household goods carrier, a communications representative, a landscaper, a fire equipment representative, a produce sales manager, a probation supervisor., an occupational therapist, a building materials dealer, an electrician, a retired social service administrator, a seaman, a college dean, a laboratory supervisor, an artist, a heat treater, a die cutter, and a retired United Nations official. These witnesses travelled to the oral hearings at New London, Connecticut and Greenport, Long Island from such points as Boston, Cohasset, Framingham, Greenfield, Mattapan, and Newton, Massachusetts; Groton, New London, Old Saybrook, Rockville, Stonington, Tariffville, and Waterford, Connecticut; Aquebogue, L. I., Babylon, L. I., Bridgehampton, L. I., Coram, L. I., East Marion, L. I., East Quogue, L. I., Farmingdale, L. I., Greenport, L. I., Hampton Bays, Laurel, L. I., Massapequa, L. I., Mattituck, L. I., Montauk, L. I., New York City, North Haven Shores, L. I., Orient., L. I., Peconic, L. I., Quogue, L. I., Riverhead, L. I., Sag Harbor, L. I., Sagaponack, L. I., Shelter Island, L. I., Southampton, L. I., Southold, L. I., Stony Brook, L. I., and Wainscott, L. I., New York; Mars Hill, Maine (a distance of 500 miles from New London, Conn.); East Providence and Providence, Rhode Island.

Collectively, these witnesses were concerned with travel from their respective origins to such points as Belmont, Boston, Cape Cod, Fall River, Otis Air Force Base (Falmouth), Foxboro, Holyoke, Hyannis, Ipswich, Leominster, Littleton, Littleton Common, Lowell, Medway, Melrose, Middleborough, New Bedford, Provincetown, Shrewsbury, Springfield, Sterling, Sturbridge, Whitman, and Worcester, Massachusetts; Hartford, Lebanon, Kent, Manchester, Mystic, New Haven, Norwich, Plainfield, and Watertown, Connecticut; Amityville, L. I., Clinton, Greenport, L. I., Montauk, L. I., Quogue, L. I., Riverhead, L. I., Sacket Pond, L. I., and Sag Harbor, L. I., New York; Arcadia, Augusta, Bangor, Freeport, Fort Kent, Limestone, Searsport, Sanford, and York Beach, Maine; Cranston, North Kingstown,and Providence, Rhode Island; Concord, Exeter, Hanover, and Sandwich, New Hampshire; Bennington, Bristol, and Stowe, Vermont; and Edmunton, Nova Scotia, Canada.

The public witnesses have used the NLFL ferries for various reasons including business, pleasure, family and other. Their respective evidence varied, and in general, included complaints of excessive waiting periods of up to 6 hours, insufficient life saving equipment, inability to board ferries with automobile, inability to board ferries as foot passengers because of inadequate life saving equipment, inabilities to get on ferry because of ferry not able to carry more than 22 to 25 automobiles, bumping (preferential treatment), being stranded, inadequacies of waiting facilities, inadequacies of convenience facilities, deplorable conditions on ferries, excessive vibrations on ferries, fear of ferries, inconveniences caused by cancellations of ferries because of breakdowns, radar trouble and otherwise, excessive traffic congestion at New London, Connecticut and Orient Point, Long Island, inabilities to get out of cars, forced to climb out of car windows, forced to drive via highway through Thogs Neck Bridge at New York because of inabilities to board ferry, inabilities by motor carriers to use ferry because of excessive waiting time resulting in excessive hours of service by drivers, no rest room facilities, forced to sleep at docks in order to assure space on vessel, leaving additional family car in line overnight to assure space on vessel, no reservation system, damages to vehicles, disclaimer of liability, crowdedness, and characterizations of present NLFL vessels as "rust buckets", "African Queen", and "head boat". (R 156-178, 209-401, 459-489, 526-637, 665-668, 710-715, 745-980, 984-1344, 1346-1528, 1531-1552) (Exhibits 51, 52, 62, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77 and 87).

In addition to the public witnesses the Town of Shelter Island, L. I., New York and the Village of Greenport, L. I., New York supported the application pursuant to appropriate resolutions of the Towns. (Exhibits 70, 90).

V

CITY OF NEW LONDON, CONNECTICUT

The City Manager, City of New London, Conn. testified that the City of New London, with certain U. S. Department of Transportation Regulations has been instrumental, through its various Congressional representatives, and through meetings with the Federal Highway Administrator, for legislation to be introduced to exempt the City of New London, Connecticut from various U. S. Department of Transportation regulations pertaining to grade crossings. (R 258-269). The City of New London, Conn.

granted applicant a special permit to utilize the property it has agreed to purchase, for purposes of docking and parking facilities at New London, Connecticut. (R 265).

The Redevelopment Agency of the City of New London, Conn. has taken a definite position in favor of applicant's proposal as it would make a positive contribution to the redevelopment of the Shaw Cove area of New London, Conn. (R 268). There was further support of the position taken by the City of New London, Conn. from the development coordinator of the City of New London, Conn. who testified and agreed that the property involved is part of the Shaw Cove Urban Renewal Project of the City of New London, Conn. which had been undertaken by the City and a contract had been signed with the Federal Government to begin execution of the contract. The witness corroborated the City Manager's testimony with respect to the Highway Safety Act of 1970 and stated that since New London, Conn. is a community of 6.2 square miles, with its greatest resource being its waterfront area, it was forced to seek legislative relief. (R 702-703). At the very worst, there would be a fencing of the right-of-way at the property involved with installation of a flashing light and arm system hooked into the circuitry of the track near the property proposed to be utilized by applicant for its docking facilities. (R 701-710). The Executive Director of the Redevelopment Agency of the City of New London, Conn. also testified to the extent that the Board of Commissioners voted favorably on the proposed ferry operation, that such would have a favorable economic impact on the City of New London, Conn. and that the service proposed by applicant was badly needed. (R 716-727) (Ex 35).

VI

INTERVENORS AND OTHER PARTIES

Generally, intervenors and other parties do not take any position on the issue of public convenience and necessity. Although many agree that there is a need for the service proposed by applicant, their prime objections are directed to the actual site or possible traffic congestion at Greenport, L. I., New York. The evidence of record shows that applicant's proposal has met favorably with various environmental groups. (R 790-964, 1622-1646, 1689-1722, 2178-2228, 2268-2281)(Exhibits 63, 64, 66, 79, 86, 100, 116).

VII

PROTESTANTS

NLFL is a wholly owned subsidiary of McAllister Brothers, Inc. which also controls and operates other water carriers subject to the jurisdiction of the Commission. NLFL controls BPJS, and such control had been the subject of a Commission investigation proceeding. (Ex 95).

NLFL holds authority to operate as a water common carrier, by self-propelled vessels, in interstate or foreign commerce, in the transportation of (1) general commodities, automobiles with passengers, and tractors, trailers, and trucks, loaded and empty, between New London, Conn., on the one hand, and, on the other, Orient Point and Sag Harbor, L. I., N. Y., (2) passengers between New London and Orient Point, and (3) passengers and general commodities, including automobiles with passengers, and tractors, trailers, and trucks, loaded and empty between Orient Point and East Marion, Southold Township, N. Y., on the one hand, and, on the other, Saybrook, Conn., pursuant to a Third Amended Certificate, issued August 17, 1955, in W-939.

Various members of the McAllister family are the officers and/or executives of NLFL. Neil McAllister, described as NLFL's general manager, maintains his office at 17 Battery Place, New York, New York which is also the corporate headquarters of the parent McAllister Brothers, Inc. Because of his involvement in other McAllister interests, Neil McAllister had not applied himself to the activities of NLFL. A certain Captain Tooker described as the resident manager of NLFL is domiciled at Port Jefferson, L. I., New York. Brent Lynch, the son-in-law of Gerard McAllister was described as the assistant to the general manager (Neil McAllister) and apparently works in concert with Captain Tooker, and 80% to 90% of Lynch's time is spent on a "new construction program for New London Freight

Lines, Inc.". Lynch's office is also at 17 Battery Place, New York, New York.

The McAllister interests own and operate in excess of 100 vessels with offices in Philidelphia, Pa., in Virginia, Puerto Rico, and Montreal, Quebec, Canada. NLFL maintains certain personnel at New London, Conn., and Orient Point, Long Island but the overall general administrative services are provided from the parent's headquarters at 17 Battery Place, New York, New York. NLFL employs a resident port engineer at New London, Conn., who is in mechanical charge of the vessels. Any and all correspondence addressed to NLFL at New London, Conn. is forwarded to 17 Battery Place, New York, New York. In response to certain claim matters and letters presented by the public witnesses, it contended that it did not recall receiving any complaint letter such as that introduced into evidence as Exhibit 87.

NLFL does not maintain a reservation system for any of its vessels that operate between New London, Conn., and Orient Point, L. I., New York. It states that its service is on a "first come first served basis to the public". NLFL's position is that because of cyclical variations in passenger transportation it does not operate for the first three to three and one-half months of each year. It contends that because of the specter of a bridge across Long Island Sound it has not purchased or made any attempt to purchase modern craft to give the public the service it desires and which it is entitled to. This specter concerned a bridge between Port Jefferson, New York and Bridgeport, Connecticut and/or Oyster Bay, New York and Southwestern Connecticut, distances of 80 to 100 miles from the eastern end of Long Island. Problems confronting NLFL are not presented before any single person. Rather, such matters are presented before a "committee" and even the Administrative Law Judge had difficulty in following the corporate structure, management, policies, and operations of NLFL. NLFL claimed to have engaged a naval architect to design new vessels for it, and has approached the United States Maritime Administration for certain governmental loans and guarantees. Although it has negotiated a contract for the construction of new vessel, such contract, as of the close of the hearing on February 20, 1974 was not executed. NLFL does not operate between Orient Point, and East Marion, Southold Township, New York on the one hand, and, on the other Saybrook, Conn., nor does it operate between New London, Conn., and Sag Harbor, Long Island as authorized in its certificate.

Applicant respectfully requests the Commission to take official notice of the annual reports filed with the Commission by NLFL, BPJS and their respective parent McAllister Brothers, Inc. As evidenced by the annual reports, it was apparent at the hearing, and admitted by NLFL and BPJS that they do not transport "general commodities" as that term is generally understood, pursuant to their certificates. Applicant further respectfully requests the Commission to take official notice of the gross revenues and net profits of NLFL, BPJS, and the parent McAllister Brothers, Inc. which would show that there are variances in the gross revenues and net profits and passenger counts of NLFL when compared to Appendices 2 and 3 of NLFL's Exhibit 93. Various other discrepancies are apparent from the testimony of Gerard McAllister testifying on behalf of NLFL and the annual reports filed with the Interstate Commerce Commission by NLFL. Attached hereto as Appendix "A" are excerpts from the annual reports filed with the Commission by NLFL. For the year ended December 31, 1972, NLFL had net revenue from water line operations of $111,891.00 whereas, according to Appendix 3 of NLFL's Exhibit 93, its net profit was $74,419.00, or a difference of $37,472.00. Similarly, NLFL's annual report would show that for the year ended 1972, it had gross revenues of $878,351.00 as compared to its alleged gross operating revenues of $843,705.00 as reflected in Appendix 3 to NLFL's Exhibit 93. Further reference to the 1972 annual report of NLFL would show that it had an $80,000.00 capital gain on the sale of its vessel known as the "Gayhead" and a profit from the sale and diposition of such property of $120,755.00. The witness for NLFL further stated that there was a modest assessment paid to the parent McAllister Brothers, Inc. but did not know whether it was $5,000.00 or $10,000.00. Reference to the 1972 annual report of NLFL would show that it carries, pursuant to account 217 of the annual report, an investment in its parent McAllister Brothers, Inc. of $852,746.00. No witness appearing on behalf of NLFL or the McAllister interests was able to explain what this "investment" was. Payments to the parent are funnelled through payments of rent, telephone and bookkeeping charges. NLFL contended that such accounting practices were on the advice of the Bureau of Accounts, Interstate Commerce Commission. (R 1740-1766, 1864-1925, 1988-2041)(Ex 93).

NLFL admitted that one of its vessels, the "Gayhead" was taken out of service. Other parties contended that the vessel was condemned by the U. S. Coast Guard. In its stead, NLFL put into service, a vessel known as the "Carribean". The vessel known as the "Carribean" accomodates 18 vehicles. The remaining two LSM's the "Orient" and the "Plum Island" (See Exhibit 52) each accomodate 22 to 24 vehicles depending on the size of the vehicles.

Other witnesses testifying on behalf of protestants included the president of the United Maritime Division, National Maritime Union, AFL-CIO, whose testimony related primarily to the wages proposed to be paid by applicant should it be allowed to commence operations. The thrust of the labor representative's testimony was that applicant would be able to execute a "sweetheart" contract with some other union. Upon cross examination, it was obvious that the hourly wages proposed to be paid by applicant were identical to the hourly wages paid by NLFL to its own personnel pursuant to the union contract. (R 1797-1849) (Exhibits 59, 60, 94).

An insurance broker that handles some of the McAllister interests insurance coverages, appeared on behalf of protestants and estimated certain insurance costs that would be encountered by applicant. These statements were estimates, based on conjecture, and did not contain anything materially different from those costs estimated by applicant. (R 2043-2060)(Exhibits 53, 97, 109).

Captain Arthur Tooker, the described "resident" manager of NLFL testified primarily with respect to the operations of NLFL and BPJS, and attempted to refute the allegations and complaints of the public witnesses concerning NLFL's cancelled trips and conditions of the ferries operating between New London, Conn. and Orient Point, L. I., N. Y. (Exhibits 98, 105). Captain Tooker spends most of his time at Port Jefferson, L. I. and stated that he is in touch with NLFL at New London, Conn. daily, by telephone. Complaints are supposedly directed to Captain Tooker, and if Captain Tooker is not available, the complaining party is directed to contact Neil McAllister at New York, New York. Cross-examination of Captain Tooker revealed that although the McAllisters have given him the title of "resident" manager of NLFL, Captain Tooker has very little to say in the selection of vessels for operation by NLFL, its management and/or operation. When the "Gayhead" was taken out of service, Captain Tooker informed the McAllisters of the necessity of another boat. The selection of the "Carribean" was made by the McAllisters, and in Captain Tooker's own words, he described the "Carribean" as "That's nothing but a motor boat, as far as the regulations are concerned. It is an ocean going motor boat that comes under Sub-Chapter H of the Coast

Guard Regulations". (R 2125-2126).

Generally, the bulk of Captains Tooker's testimony was spent on criticizing applicant's proposal and his attempting to justify the various conditions of the NLFL vessels. (R 2087-2172)(Ex 98).

The vice president and general manager for McAllister Brothers, Inc. described the overall operations of McAllister Brothers, Inc. This witness (Edward J. Todd) attempted to relate the operational aspects of the S. S. New Jersey to a 1907, 2,000 horsepower, side-wheel excursion boat. This witness' statement was predicated on conjecture with no in-depth study of the S. S. New Jersey. (R 2282-2299)(Ex 101).

J. Brent Lynch (Lynch) the son-in-law of Gerard McAllister, testifying on behalf of NLFL stated that in the past year he has devoted approximately 80% of his time to the NLFL operation in an effort to improve its service; that there were numerous operating committee and directors' meetings concerning investment for a new vessel; that meetings were held with political leaders; and that in order to bolster the NLFL service after the "Gayhead" was taken out of service, NLFL chartered the "Carribean" ferry. Lynch's evidence also related to criticism of applicant's proposal based on Lynch's telephone conversations with a former employee of The Delaware River and Bay Authority as well as meeting with the Director of The Delaware River and Bay Authority which will be referred to hereafter.

On cross-examination, Lynch admitted that he visits the offices of NLFL at New London, Conn. and Orient Point, L. I.

"normally on weekends, although not every weekend, but particularly in the summertime". (R 2314-2315)(Ex 102).

An economist, (Thomas Conoscenti) appearing on behalf of protestants contended that there would be insufficient traffic (vehicle and passenger traffic) for two carriers between the eastern end of Long Island, N. Y. and New London, Conn. if applicant was authorized to operate its proposed ferry service in competition with NLFL.

The economist's study was predicated on certain population data which he described as a "potential market" whereby population data from the eastern end of Long Island, N. Y. was used. No consideration to population was given to any point or points in the New England area. Generally, the study was predicated on mileage distances, a mileage formula, and average speed between points on Long Island to New London, Connecticut via the Throgs Neck Bridge and points on Long Island to New London, Connecticut via a land/ferry route. It is interesting to note that this economist failed to consider commercial traffic or freight movements of potatoes and/or seed-potatoes moving during a period of the year when NLFL does not operate. Even more significant, is the conclusion by the economist that the projected daily need of spaces on vessels by 1975 would be 593, and by 1977 it would be 831 (Ex 7.00 of protestant's Ex 106). The fallacy of the study is that it only projects a one-way movement and a one-way need of vessel spaces. In other words, if 593 persons with automobiles would use the ferry, these

593 persons and automobiles would of course have to return and thus a correct capacity need, based on the economist's projection for 1975 would be 1,086 spaces and there would be a requirement of 16,062 spaces on vessels by 1977. (R 2358-2417)(Ex 106).

It is further interesting to note that shortly after the economist Thomas Conoscenti testified at Greenport, Long Island on January 10, 1974 on behalf of NLFL, the same said Thomas Conoscenti presented a preliminary market study reflecting that there is an immediate potential of 1,000 auto trips a day across Long Island Sound. Said study was presented before a business association and applicant respectfully requests the Commission to consider a copy of the newspaper clipping reflecting the same said Thomas Conoscenti's study which is attached hereto as Appendix "B". While Thomas Conoscenti refers to the point of Wading River, N. Y. such point of Wading River, N. Y. is approximately 28 miles west of Greenport, Long Island.

Other witnesses testifying in support of NLFL included a Presbyterian Minister, personally friendly with Gerard McAllister, and who, upon cross-examination admitted that he has experienced waiting periods of approximately two hours to board the NLFL ferry (R 1724)(Ex 84)(R 1722-1724); a friendly competitor of the McAllisters who also admitted upon cross-examination that he had to wait in line frequently up to two hours (R 1726-1727); a social acquaintance of Mr. and Mrs. Gerard McAllister, who also admitted upon cross-examination that she has had to wait in line for at least an hour before being able to board the NLFL ferry (R 2346), and who presented a statement (Ex 103) virtually identical to that of Exhibit 104 (R 2345-2349, R 2349-2354); a prepared statement of Henry J. Rendich, Jr., Gerard McAllister's nephew, the individual referred to by one of the public witnesses as the party receiving preferential treatment (Ex 99); a business acquaintance of Mrs. Diane Acker, (a stockholder in BPJS), such Mrs. Diane Acker owning a bus company and for which the witness was engaged to perform certain painting operations of the busses owned by Mrs. Acker (R 2068-2070), and who was unable to recall if he used the NLFL or BPJS ferry in the past (R 2078-2079); a witness who feared the discontinuance of NLFL but upon cross-examination, admitted that he and/or his personnel had experienced excessive waiting times at the NLFL ferries (R 2235) and that his personnel (drivers of motor vehicles) have had to drive around over the Thogs Neck Bridge because they were unable to get on the NLFL ferries (R 2235-2236); and a witness who testified at the request of Captain Tooker and admitted also experiencing waiting periods for about two and one-half hours (R 2243).

VIII

THE DELAWARE RIVER AND BAY AUTHORITY

During the presentation of evidence by applicant and protestants, references were made to certain business transactions, conferences, telephone calls and meetings with a representative of The Delaware River and Bay Authority. NLFL contended, through its witness Lynch, that the vessels being acquired by applicant from The Delaware River and Bay Authority were not suitable for ferry operations between New London, Conn. and Greenport, L. I., N. Y. Certain allegations were also made by Lynch concerning the attitude and conversation that Lynch had with the Director, The Delaware River and Bay Authority.

The Administrative Law Judge afforded applicant an opportunity to rebut the evidence presented by NLFL. Rebuttal was presented at Washington, D. C. on February 20, 1974. William J. Miller, Jr., Director, The Delaware River and Bay Authority appeared and testified with respect to the business transaction with applicant and in relation to his meeting and conversations with Lynch; the records of fuel consumption of the S. S. New Jersey; the cost of repairs of the S. S. New Jersey while the S. S. New Jersey was in the possession of and under the ownership of The Delaware River and Bay Authority; the ferry revenues of The Delaware River and Bay Authority; and the matters pertaining to the purchase by The Delaware River and Bay Authority of shallow draft vessels to replace the vessel sold and the vessels to be sold to applicant.

Witness Miller specifically stated that the prime purpose for the sale of the vessels to applicant by The Delaware River and Bay Authority was because of the desire of The Delaware River and Bay Authority to secure shallow draft vessels to overcome the severe dredging problem and dredging costs that The Delaware River and Bay Authority had been experiencing. Witness Miller further refuted the language characterized by Lynch when he met with witness Miller concerning the sale of the vessels to applicant. (Ex 108, Page 5). In addition, witness Miller testified that overtures had been made to him by Lynch and a certain Luther Blount, in a broker capacity, in connection with the possible purchase of the S. S. New Jersey for the McAllister interests. (R 2424-2474) (Ex 108).

IX

APPLICANT'S REBUTTAL

At the continued hearing at Washington, D. C. on February 20, 1974, applicant, in rebuttal, presented evidence concerning the cost of insurance (Ex 109); the U. S. Coast Guard Regulations (49 C.F.R. Parts 78.40-1) pertaining to storage of vehicles and "egress" from motor and/or passenger vehicles while they are on NLFL's ferry, (Ex 110); costs of installing pilings at Greenport, N. Y. and New London, Conn. (Exhibits 111, 112); and further clarified the number of rest rooms on the S. S. New Jersey which refuted Captain Tooker's remarks that the S. S. New Jersey does not comply with the Coast Guard's Regulations More specifically, applicant stated that the S. S. New Jersey has a total of four rest rooms; that in the ladies' lounge on the main deck there are three toilets and three wash basins; that in the ladies' lounge on the after deck there are one toilet and one wash basin; that in the men's lounge on the main deck there are three toilets, three urinals, and four wash basins; that in the men's lounge on the after deck there are one toilet and one wash basin; that the S. S. New Jersey has additional facilities for the crew, such facilities consisting of four toilets and three wash basins in the forward part of the S. S. New Jersey; and that in total, there are, on the S. S. New Jersey, twelve toilets, three urinals, and twelve wash basins, and based upon Coast Guard Regulations of ferry vessels with a capacity of 500 to 1,000 passengers, the S. S. New Jersey meets the Coast Guard Regulations.

Applicant further presented its position with respect to the site at Greenport, Long Island which apparently is the basis of opposition of some intervenors. Applicant had on numerous occassions, attempted to secure another parcel of property known as the Long Island Railroad property. It had met with the president of the Long Island Railroad and attempted to secure such property for a docking site at Greenport, Long Island, but was informed by the president of Long Island Railroad that the Long Island Railroad was negotiating with the Village of Greenport and would not entertain any negotiations with Mascony. It was therefore apparent that applicant had made every attempt to secure property other than the present property at Greenport, Long Island. The Greenport, Long Island site presently involved is and was the only remaining site at Greenport, Long Island. Under the circumstances, applicant entered into an additional agreement with the owner of the property whereby such owner agreed to permit applicant to remove a portion of a building (banquet hall) thereby permitting the widening of the driveway at the site to 55 feet. This agreement resulted in partial withdrawals of the opposition by the Greenport Planning Board and NYDOT, the latter, by letter dated March 18, 1974, directed to the Administrative Law Judge, and the former, by letter identified as Exhibit No. 116.

Applicant further presented a map (Ex 114) through its witness Edwin Davies, a certified sea captain and one that had testified earlier in the proceeding on Thursday, November 1, 1973. Captain Davies stated that he personally had observed the facilities at Greenport, Long Island and viewed the operations of the Shelter Island Ferry on Saturday, February 16, 1974 by air and on land. Captain Davies expressed his opinion that there would be no problem in maneuvering the S. S. New Jersey in entering and leaving the docking facilities at Greenport, Long Island as reflected on the plan identified as Exhibit 114. It was the further position of Captain Davies that based on U. S. Coast and Geodetic Map No. 363, published by the United States Department of Commerce, a "blow up" of which was received into evidence as Exhibit 115, that the S. S. New Jersey would afford protection to all Shelter Island ferries by giving lee to the Shelter Island ferries; that the S. S. New Jersey would not dominate the harbor as contended by some parties opposed to the proposal; that the general routes of the S. S.

New Jersey and the Shelter Island Ferries do not conflict; that there should not be any diffficulty whatsoever in communicating with the Shelter Island ferries to prevent mishaps; and that communications between vessels are mandatory.

Of particular concern to Captain Davies were the disparaging remarks concerning Captain Davies ability, such remarks having been made by Charles Harris, a Shelter Island Ferry employee. Captain Davies had read the transcript and in particular, the testimony of Charles Harris. In refuting Charles Harris' testimony, Captain Davies stated that when he was requested to bring a vessel into Greenport, Long Island approximately 20 years ago, that request required that he board a freighter that would be coming through the Cape Cod Canal and was also informed that the freighter would be approximately 200 feet long. Captain Davies was to "captain" the vessel into Greenport, Long Island. When the vessel arrived at the Cap Cod Canal, it was ascertained that the vessel was not 200 feet in length, but rather, 421 feet in length, with a beam of 25 feet and a draft of 16 feet. Captain Davies, in bringing the vessel into Greenport, Long Island did not drop an anchor astern as stated by witness Harris of Shelter Island Ferry. Rather, Captain Davies dropped an anchor in order to allow him to control the vessel due to its excessive length. Captain Davies vehementaly denied knocking down pilings at the dock as stated by witness Harris of Shelter Island Ferry. The vessel brought into Greenport, L. I. by Captain Davies extended beyond the dock and in order to unload cargo in Hatch No. 4, the owners of the vessel contracted with Shelter Island Ferry for use of their ferries in unloading the cargo in the form of a lighterage service from Hatch No. 4 which extended beyond the dock.

Captain Davies further testified that after reading the testimony of witness Harris, he disagreed vehemently with witness Harris, and that in view of the testimony of witness Harris, he, Captain Davies, in his position as the captain of the S. S. New Jersey would "want to stay clear of Captain Harris". It was further Captain Davies'opinion that the Shelter Island Ferry operation is a simple operation and there should not be any difficulty by a well qualified seaman in maneuvering the Shelter Island Ferry vessels which have beams of 30 feet, through a passage of 170 feet as reflected on the plan and exhibit presented as Exhibit No. 114. It was Captain Davies further opinion that in view of the testimony of witness Harris, such evidence of witness Harris be presented to the U. S. Coast Guard in view of the fact that witness Harris stated that he has virtually no control over the Shelter Island Ferry vessel because of its forward propeller, its stern propeller and not enough rudder, which cause the Shelter Island ferries to come into Greenport Harbor and its ferry slip "on a crab fashion". (R 2424-2559).

At the conclusion of the hearing at Washington, D. C. on February 20, 1974, the Adminstrative Law Judge directed applicant's counsel to inform all parties of record of the evidence presented by applicant on February 20, 1974. Applicant's counsel, by letter dated March 1, 1974 informed all parties of record of same and further informed all parties of record, based on the directive of the Administrative Law Judge, that if any party of record desired to cross-examine any of the witnesses appearing on behalf of the applicant on February 20, 1974, they should notify the Administrative Law Judge and the Interstate Commerce Commission on or before March 11, 1974 of their desire to do so. Such letter informed all parties that pursuant to the request of the Administrative Law Judge, the parties should name the witnesses they desired to cross-examine, the reasons for such cross-examination, and forward to all parties of the proceeding, copies of their requests and reasons for cross-examination. In addition, the Administrative Law Judge stated that should any party desire to present surrebuttal evidence, they give notice of such to the Administrative Law Judge, the Interstate Commerce Commission, and all parties of record, on or before March 18, 1974 of their intent to present surrebuttal evidence, the names of the witnesses they intended to call for surrebuttal, and a short statement indicating the evidence to be presented by such witness.

The record shows that not a single party in opposition to this proceeding (other than NLFL which cross-examined on February 20, 1974) desired to cross-examine the witnesses presented by applicant on February 20, 1974, nor did a single party desire to present any surrebuttal evidence. As stated previously, the Greenport Planning Board modified its position somewhat in view of the proposed widening of the driveway at the proposed Greenport, L. I. site and NYDOT by letter, modified its position accordingly. It is noted that the letter addressed to the Administrative Law Judge and received into evidence as Exhibit 116 referred to the non-receipt by Advine Realty, in writing, of a proper document for permission from the mortgage holder to remove any part of the unfinished banquet hall. To satisfy all parties and to confirm the statement made by Kurt Jensen relative to this matter, there is attached hereto as Appendix "C", a copy of a letter from the mortgage holder's attorney and a copy of the subordination agreement signed by the mortgage holders of the property, wherein such mortgage holders have given their consent to the lease agreement between Advine Realty Corp. and applicant, and that subordination agreement was duly filed in the office of the Suffolk County Clerk, Suffolk County, Long Island, N. Y. on March 22, 1974.

X

DISCUSSION

It is apparent that protestants did not take applicant's proposal too seriously until the application had been filed with the Interstate Commerce Commission.

Protestants, and more specifically NLFL were aware of the gross inadequacy of service and indifference to the general public concerning the NLFL service between New London, Conn. and Orient Point, L. I., N. Y.

For 18 years, NLFL and its parent, McAllister Brothers, Inc., have done nothing to improve the service for the general public. It can be concluded that because of the failure of NLFL and/or the McAllisters to improve service between New London, Conn. and Orient Point, Long Island that the matter of the proposed bridges across Long Island Sound actually came into play. Stated otherwise, if there were a decent, adequate, dependable service across Long Island Sound, there would never have been any discussions and/or proposals of a bridge across Long Island Sound. In any event, the bridge proposed was closer to New York City, far removed from the eastern end of Long Island, and the excuse of NLFL for not improving its service through additional vessels and/or larger vessels cannot be accepted nor tolerated.

The record is replete with evidence presented by the general public characterizing the World War II vintage landing craft as "rust buckets", "African Queen", and "head boat". Such vessels were described by a United Nations official as "rusty buckets" and "derisory". (R 929, 931), and by a retired naval commander, who described the two World War II LSM ferries named the "Plum Island" and the "Orient" thusly: "I'm not an expert on ferries, but I have been on quite a few. I have been on the Hong Kong to Macau, the Kowloon - Hong Kong, the ones in the Mediterranean, Sardinia to Sicily, to Capri, to Capri to Sorrento, to the Greek Islands and

Yugoslavia and South America. I have never been on anything like this before". (R 1205

The record is replete with evidence of long waiting periods by numerous members of the public, of their inability to secure a reservation service, of their receipt of poor treatment, of preferential treatment, and a general disregard of the situation by NLFL.

For 18 years, protestants have done nothing. They have been content to rest on the excessive profits from the NLFL seasonable operation of late March and/or early April through December of each year, and all, with an absentee management. Complaints by the public fell on "deaf" ears. NLFL's sailing schedule (Ex 78) reflects seasonable operations and disclaimers of liability.

It was only after NLFL and McAllister Brothers, Inc. became aware of the seriousness of the applicant's proposal that they commenced to do something. Allegedly, they entered into negotiations for new vessels, making speeches, and even attempting to purchase one of the vessels that applicant had contracted to purchase from The Delaware River and Bay Authority. Instead of attempting to improve the service between New London, Connecticut and Orient Point, Long Island, NLFL and the McAllisters have gone to no end to undermine the proposal of applicant, includin opposition at other hearings such as at environmental proceedings in New York and Connecticut.

NLFL offered no explanation as to its complete shutdown of operations for the first three to four months of each year. The Commission has considered that total shutdown of operations by a certificated common carrier is unauthorized and constitutes an unlawful repudiation of the duty inherent in its operating certificate. So long as a certificated authorization remains outstanding, it carries with it the duty to provide reasonably continuous and adequate service at all authorized points. While there may be, under appropriate circumstances, a decrease in public need and in the demand for service, a carrier may be justified in correspondingly reducing the quantum of service, but a total cessation of service is neither within a carrier's discretion nor consistent with a carrier's responsibilities to the public under its certificate. Compare: Braswell Motor Freight Lines, Inc. - Investigation, 118 M.C.C. 392. NLFL's loading of automobiles on to empty trailers and its preferential treatment of individuals and/or sizes of automobiles cannot be condoned. As stated by several public witnesses, NLFL assumed a "public be damned" attitude.

Although it chartered a vessel known as the "Carribean", in a last ditch attempt to alleviate the chronic situation, that vessel is an open-type pleasure ferry that ordinarily operates in the calm waters of the Carribean Sea in and around Puerto Rico. It is a small vessel and does not have closed sides, but rather has rails. Although NLFL claims that it accomodates 18 passenger automobiles, because of its limitations, it cannot accomodate trucks or tractor-trailer units, does not have an open bow or an open stern, and consequently, vehicles must be backed on or off, depending on the loading and/or unloading at the departure and/or arrival dock. The congestion in boarding all of NLFL's vessels, the excessive waiting, and the deplorable conditions of the vessels themselves, are a disgrace. NLFL has not adhered to or even given any consideration to the public's request for a "reservations system" as such would avoid needless waits and would guarantee an individual of knowing whether he can or cannot get on the ferry at either New London, Conn. or at Orient Point, Long Island on a specific date and a specific time.

In addition to the dissatisfaction of the World War II landing barges operated by NLFL and named the "Orient" and "Plum Island", the public has been dissatisfied with the "Carribean" ferry. It has been further characterized by NLFL's own witness and "resident" manager, Captain Tooker, as an "ocean going motor boat".

So inadequate is the service of NLFL, that the Connecticut Department of Transportation, Bureau of Planning and Research, in 1972 undertook a study concerning the inadequate ferry service between New London, Conn. and Orient Point, L. I. That particular study has been presented in this proceeding as Exhibit No. 47 and the conclusion therein cannot be contradicted namely that the existing service offered by NLFL is definitely inadequate to meet demand.

Applicant's vessels can accomodate 100 automobiles, or a mixed load of 85 vehicles, consisting of passenger automobiles, trucks and tractor-trailer. It can accomodate 800 passengers. It is readily apparent that applicant's vessel, which is currently dock at New Bedford, Mass., is available for immediate service to alleviate the chronic problem that has existed between New London, Conn. and eastern Long Island for the past 18 years.

The public witnesses testified that there is an average distance of 200 road miles (one-way) between New London, Conn. and Orient Point, L. I. or Greenport, L. I. On the basis of the evidence presented, the average automobile receives between 10 to 12 miles per gallon of gasoline and a one-way motor vehicle trip between New London, Conn. and eastern Long Island would consume 20 gallons of gasoline. On a "round-trip" basis, an automobile would use approximately 40 gallons of gasoline. There were witnesses testifying concerning a need for a ferry service for commercial vehicles such as trucks and tractor-trailer units. Such vehicles receive 4 to 5 miles per gallon of gasoline. It necessarily follows that on an average one-way basis of 200 road miles, there would be a savings of 40 to 50 gallons of fuel by trucks and tractors, and on a "round-trip" basis between the points of New London, Conn. and Greenport, Long Island, there would be a savings of 80 to 100 gallons of fuel.

The hearing itself was conducted during the "fuel-crisis", and although at this writing, there has been some relief in the fuel crisis, the fuel crisis and its problems still remain.

As the Commission has stated in a recent proceeding, fuel is a precious resource in short supply. While applicant's vessel will of course consume fuel, such fuel would be minimal in comparison with the number of gallons of gasoline saved on a sailing of 100 passenger automobiles (or mixed autos and commercial vehicles) on applicant's ferry. For example, a fully loaded vessel, one-way from New London, Conn. to Greenport, L. I., carrying 100 cars, with each car saving 20 gallons of gasoline, there would be a savings of 2,000 gallons of gasoline ONE-WAY. On a round-trip ferry sailing, there is a savings of 4,000 gallons of gasoline. There is no doubt that the proposed operation will conserve fuel. On the basis of four-round trips alone, during peak seasons, the use of applicant's ferry would resolve in a minimum savings of 16,000 gallons of gasoline a day. The conservation of fuel would be even greater, if there were tractor-trailer units or other commercial types of vehicles aboard the vessels. Projected on an annual basis, on four-round trips a day, with each round-trip saving 4,000 gallons of gasoline, there will be a savings of in excess of 6,000,000 gallons of fuel a year, considering that there will be commercial vehicles in addition to passenger vehicles.

Applicant respectfully requests the Commission to consider this fuel saving benefit in light of the Commission's own recent decision in Ex Parte No. 55 (Sub No. 8), Motor Common Carriers Or Property, Routes and Service, (Petition For The

Elimination Of Gateways By Rule Making), 119 M.C.C. 530. The Commission, in Ex Parte No. 55 (Sub No. 8), estimated that the action of the Commission in that proceeding would conserve about 300,000,000 gallons of fuel a year. Applicant submits that its proposal should convincingly portray to the Commission that a grant of the authority is another step in the conservation of fuel. While applicant projects a savings of 6,000,000 gallons of gasoline a year, the fact remains that it represents 2% of the estimated number of gallons of gasoline that would be saved nationwide, under Ex Parte No. 55 (Sub No. 8).

A grant of authority to applicant as proposed, would be fully consistent with the anti-pollution programs established by the Environmental Protection Agency and the Federal Energy Office. Reference to Ex Parte No. 55 (Sub No. 8) reveals that these agencies are deeply concerned with highway movements. Applicant's proposal will eliminate numerous motor vehicles operating on the Connecticut Thruway, the Throgs Neck Bridge in New York City,and the Long Island Expressway. The proposal will result in the reduction of one-way highway mileage driving of 200 miles. Approximately 400 road miles or more, on a round-trip basis, would be eliminated. The result would also be in accord with the position of the Environmental Protection Agency and the Federal Energy Office whereby automobile and commercial vehicle tires will not wear out as quickly, thereby saving rubber, and less asbestos from brake linings would be left on the highways. As stated by the Commission in Ex Parte No. 55

(Sub No. 8), the Environmental Protection Agency was concerned with asbestos on the highway. The Commission adopted the concern in view of the report by the Environmental Protection Agency, that asbestos, which is washed off the highways by rain into nearby streams adds to the pollution of waterways.

The Commission and the public should not be forced to continue to accept the excuses of NLFL for its not rendering an adequate in the past. Neither can the Commission and the public wait until NLFL at some future date, agrees to execute a contract for the building of a new vessel. Such a new vessel would take at least another two years or more before it could be placed into service. The need exists now. The proposal of Mascony will provide relief to the situation, and alleviate existing traffic congestion and air and noise pollution. Just as local governments seek to relieve traffic congestion and air and noise pollution, and to discourage undue energy consumption by encouraging their citizens to utilize mass transit facilities, the use of the facilities proposed by Mascony must be supported and can only become a reality if the Commission grants applicant the authority it seeks.

A grant of the authority would eliminate needless driving by members of the public of 5 to 6 hours. It would alleviate traffic problems on the Connecticut Thruway, the Throgs Neck Bridge, New York City, and the Long Island Expressway which are already unduly burdened with passenger and commercial vehicle traffic. It will eliminate pollution on these roads as well as eliminating noise in those areas. In eliminating certain amounts of highway congestion, it may also aid in the elimination of the need for a certain amount of highway expansion.

Most importantly, the need of the general public cannot be ignored. While protestants would apparently and have apparently taken the position that the public witnesses appearing on behalf of applicant were carefully "culled", there is no basis for such allegations. These witnesses came from distances of 500 miles from the hearing points. It is inconceivable that any applicant could carefully "cull" in excess of 100 witnesses for presentation of evidence at a hearing such as that involved in this particular proceeding. Protestants lose sight of the fact that passengers, or customers of mass transportation facilities, are not in the same category of experienced institutional shippers of freight which are frequent and high volume users of carrier services. The average passenger can be depicted as "Mr. John Q. Public" who has little opportunity to learn the intricacies of passenger and/or freight transportation, and lacking familiarity, is at a disadvantage in proceedings before the Interstate Commerce Commission. The instant application was supported by a plethora of witnesses who have used the services of NLFL and who have been highly dissatisfied with that service. All of the witnesses have voiced an intention to use applicant's service, are attracted to the vessel itself, the points of New London, Conn. and Greenport, Long Island, and applicant's proposed reservation system. The public witnesses testified to the best of its ability with respect to specific instances, times, inconveniences, delays, and other complaints. The Commission is well aware that evidence in a proposal to transport passengers results in sometimes, somewhat generalized testimony on the part of the supporting public witnesses. This is because the nature of these types of application proceedings is such that the transportation proposed is normally provided infrequently for laymen, rather than regularly for businessmen. While NLFL contends that the passenger use of its ferry service is composed of non-repetitive users, it is obvious, based on the evidence presented by the public witnesses that there was and is a large amount of repetitive use of NLFL's ferries. Otherwise, these witnesses would not be able to present numerous instances of complaints. It could be reasoned that NLFL's non-repetitive traffic is because many members of the public, having experienced the NLFL service, decided that they would never use or attempt to use it again. There were many witnesses who stated that they would never use the NLFL service again.

The Commission has held, in passenger proceedings, that the non-repetitive nature of a passenger operation militates against producing evidence concerning past performance and future requirements as specific as that expected in cases involving the transportation of freight. Moreover, the characteristi of passenger travel as contrasted with the needs of the shipping public for definite, continuous transportation, makes it highly unlikely that passengers can give the same firm commitment for carrier use as that which may be reasonably anticipated from supporting shippers of freight. Compare: Brush Hill

Transportation Co., Common Carrier Application, 112 M.C.C. 348. Applicant submits that the public testimony convincingly shows that there is a need for its proposed service and that the existing service is highly inadequate to meet the public's present and future needs.

The Commission cannot ignore the need of the ferry by commercial users. Motor common carriers and private carriers must comply with the U. S. Department of Transportation Safety Regulations. The use of applicant's ferry, under its proposal, will avoid excess road-miles and will also enable existing common, contract and private carriers to reduce mileage distances, conserve fuel, and eliminate excess driving hours and/or on duty hours that result when their motor vehicles must traverse the Connecticut Thruway, the Throgs Neck Bridge in New York City, and Long Island Expressway upon being unable to get on or use the present ferry. The short-cut across Long Island Sound via an adequate ferry system, such as proposed by applicant is thus a necessity.

Certain intervenors fear that vehicular traffic would be generated through the operation of applicant's ferry service at Greenport, Long Island and that such would be detrimental to them. Not a single iota of evidence had been presented at the hearing by any intervenor which would convincingly portray to the Commisssion that there would be excess traffic congestion and that there would be an adverse affect upon any intervenor. Even NYDOT presented no sound basis for the Commission to arrive at a conclusion that there would be excessive traffic congestion at the Greenport, Long Island site. Applicant had presented a proposed plan to eliminate and/or alleviate any possible vehicular congestion. Neither intervenors nor protestants, presented evidence to the effect that applicant's parking and use of land facilities at Greenport, L. I. would be detrimental to or harm the general public at Greenport, L. I.

Section 309(c) of the Interstate Commerce Act specifically states that "the Interstate Commerce Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the applications, if the Commission finds that the applicant is fit, willing and able to properly perform the service proposed and to conform to the provisions of this part and the requirements, rules and regulations of the Commission thereunder, and that the proposed service, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity...".

In addition, Section 309(c) states that "no certificate issued under this part [Part III of the Interstate Commerce Act] shall confer any proprietory or exclusive right or rights in the use of public waterways". In essence, the use of waterways are public. Neither protestants nor intervenors can adopt a selfish attitude that no certificate of public convenience and necessity can be issued because it will not benefit that particular person and thus contravene the general public's need for the service. Thousands of members of the public are in need of a service between New London, Conn. and Greenport, L. I. The Commission must weigh the benefits to be derived through the service proposed by applicant as against the selfish reasons of opposition by a limited few.

The term "public convenience and necessity" is vast and important. The term first appeared in Section 1(18) of the Interstate Commerce Act. The early statutory use of the term "public convenience and necessity" was a part of the over-all scheme of regulation undertaking in the original Act to Regulate Commerce (The Interstate Commerce Act) as enacted in 1887. Congress left to the Interstate Commerce Commission the interpretation of the term and the administration of the criteria thereunder. In early cases, it was found that the term "public convenience and necessity" implied both convenience and necessity, since the words were not synonymous and had to be given a separate and distinct meaning. In one of its earlier cases, (Atlanta and St. A. B. Railway, 71 I.C.C. 784 [1922]), the Interstate Commerce Commission followed two state cases, one from Rhode Island and one from Wisconsin, and determined that:

> "'Necessity does not exist unless the inconvenience would be so great as to amount to an unreasonable burden on the community.' Hunter -v- Meyer, 5 R. I. 325. 'The words imply an urgent and immediate public need.' Wisconsin Telephone Co. -v- Railroad Commission, 162 Wisconsin 383, 156 N. W. 614."

In a subsequent decision in 1926 (San Antonio & Arkansas, 111 I.C.C. 483) the Interstate Commerce Commission further recognized that "public convenience and necessity" was dependent upon the facts in each case; that it was undesirable if not impossible to lay down any general rule by which it can be determined whether or not certificates of public convenience and necessity should be issued for new lines, and that every case must be decided in the light of its own special circumstances.

In an investigation in 1928, the Commission recommended that Congress regulate motor carriers and issue certificates. It is interesting, however, that while the Interstate Commerce Commission discussed certificates it did not define or attempt to define the term "public convenience and necessity" which first appeared in Section 1(18) of the Interstate Commerce Act, and which at that time applied only to railroads. The United States Supreme Court, at approximately the same time, stated the reasons and purposes for the adoption of Section 1(18) of the Interstate Commerce Act, but did not itself, define the term "public convenience and necessit

Subsequently with the enactments of Part II of the Interstate Commerce Act in 1935, (applicable to motor common carriers) and Part III of the Interstate Commerce Act in 1940 (applicable to water common carriers) the terms "public convenience and necessity" were used in Sections 207 and 309 of the Interstate Commerce Act. The language of Sections 207 and 309 in this respect is identical.

In one of its earliest cases under Part II of the Interstate Commerce Act, the Interstate Commerce Commission in *Pan American Bus Line*, 1 M.C.C. 190 (1936) discussed in depth, the term "public convenience and necessity" and what it meant, stating:

> "Section 207(a) of the Motor Carrier Act is similar in general to Section 1(18) of the Interstate Commerce Act... and both employ the expression 'public convenience' and 'necessity'. The words 'convenience' and 'necessity are used conjunctively, and we have found that they are not synonymous but must be given a separate and distinct meaning. *Atlanta and St. A. B. Ry. Co. Application*, 71 I.C.C. 784. Yet it is clear that the word 'necessity' must be somewhat liberally construed, for there are comparatively few things in life which can be regarded as an absolute 'necessity', and it was surely not the intent of Congress to use the word in so strict and narrow a sense.
>
> "The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest".

In a subsequent case, the United States Supreme Court in Interstate Commerce Commission -v- Parker, 326 U. S. 60, stated:

> "Public convenience and necessity is not defined by the statute. Its nouns in the phrase possess connotations which have evolved from the half-century experience of government in the regulation of transportation. When Congress in 1935 amended the Interstate Commerce Act adding the Motor Carrier Act, it chose the same words to state the condition for new motor lines which had been employed for similar purposes for railroads in the same act... Such use indicated a continuation of the administrative and judicial interpretation of the language... The Commission had assumed, as its duty under these earlier subsections, the finding of facts and the exercise of its judgement to determine public convenience and necessity. This Court approved this construction. Chesapeake & Ohio Railway Co. -v- United States, 283 U. S. 35... The purpose of Congress was to leave to the Commission authoritatively to decide whether additional motor service would serve public convenience and necessity..."

Although there is no one precise definition of the term "public convenience and necessity", the conclusion can be reached that the best definition is that which has been upheld for a number of years in the Pan American case.

Over the years the criteria used to determine public convenience and necessity have not been static, but rather, dynamic and changing. The criteria followed by the Interstate Commerce Commission allow the addition of new factors or the deletion thereof for the granting of certificates to a party proving certain facts.

Pertinent factors considered as important in the determination of cases in the issuance or denial of a certificate of public convenience and necessity are inadequacies of existing services. This factor has for many years been one of the indicia with respect to a finding that public convenience and necessity require the proposed operation. When one actually attempts to enumerate what are examples of inadequacies upon which an attempt is made to secure a favorable finding, we come to a partial listing of the specific factors upon which the Interstate Commerce Commission has bases of favorable findings. Common factors such as poor equipment, insufficient equipment, delays, poor transit time, excessive claims, indifference to the public, insufficient schedules and a myriad of other circumstances which are included within the over-all term "inadequacies of existing service".

The Commission has held in numerous water cases, that shippers and communities are entitled to adequate transportation service by water, with its inherent benefits and advantages, upon proof of a need therefor. *Newtex S. S. Corp., Extension*, 285 I.C.C. 260. Similarly, the Commission has followed the opinion of the court in *Coyle Lines, Inc. -v- United States*, 115 Fed. Supp. 272 with respect to the effect of a new water competitor on a carrier already established. In *Coyle*, supra, the court held that a carrier first in business has no immunity against future competition, and the fact that service proposed to be performed by an applicant would provide competition to another carrier, was not, alone, sufficient to vacate an order of the Interstate Commerce Commission granting applicant a certificate.

In determining the present application, the Commission must weigh the needs of the *general public* as a whole and not to any selfish personal desires of a limited number of individuals.

There is no doubt that NLFL presently holds a monopoly between points and/or the area involved. The Commission has consistently held that the mere existence of a monopoly, standing alone, is not a sufficient justification for the establishment of a new operat *in the absence of showing of some inferiority or inadequacies in the transportation services of the existing carrier*. *Newmarket Coach Lines, Common Carrier Application*, 84 M.C.C. 264, *York Interst Trucking, Inc., Extension - Muriatic Acid*, 67 M.C.C. 626, *Transport, Inc. Extention - Sioux Falls, South Dakota*, 81 M.C.C. 751, and *P. C. White Truck Line, Inc. Extension - Northwest Florida*, 102 M.C.C. 204. However, the Commission has also concluded that where the fact of monopoly has been established, it is entitled to look to protestant for proof and it should be able affirmatively to find that the carrier holding such position has not used its exclusive occupancy of the field in question, or allowed it to operate to the disadvantage of the public, failing which the very fact of monopoly may be considered as a circumstance requiring remedial action. West Coast Bus Lines Common Carrier Application, 41 M.C.C. 269, 290.

In the instant proceeding, not only is there a monopoly, but there is an inferiority of and inadequacy in the existing service of the exclusive carrier NLFL. NLFL has used its exclusive occupancy and monopoly to the disadvantage of the public.

A public need has been demonstrated for the need of the authority sought. Protestants are not now performing a reasonably adequate service and although inadequacy of existing services is not an absolute prerequisite, but represents only one element to be considered in arriving at the broader determination of public convenience and necessity, it is obvious that this criterion is one of the key issues in this proceeding. Other factors of importance include the public's need for added water carrier competition and the requirement of facilities for a decent and adequate passenger and ferry service. Compare: Nashua Motor Express, Inc. -v- United States, 230 F. Supp. 646, 652-653.

Within recent years, the Commisssion has had occassion to act on three water carrier applications for certificates for public convenience and necessity, The Ohio River Company Extension - Lower Mississippi River, 343 I.C.C. 509, Sioux City and New Orleans Barge Lines, Inc. Extension - Mississippi River System, 343 I.C.C. 412, and Hennepin Towing Company, Extension - Upper Mississippi River, 343 I.C.C. 422. In each of these proceedings, the Commission cited Nashua, supra with respect to the criterion of inadequacy of existing services. In each of the proceedings, the Commission stated:

> "The word 'necessity' must not be taken too literally as requiring a transportation crisis of major proportions before an application is granted. If that were the meaning, the word 'convenience' would be an obvious redundancy. Norfolk Southern Bus Corp. -v- United States, 96 F. Supp. 756, 761, affirmed 340 U.S.802.The promotion of efficient service and the fostering of sound economic conditions in transportation are among the prime aims of the national transportation policy and we must be guided by these goals in the determination of all applications presented to us for decision".

Wherefore, applicant respectfully submits that it has sustained its burden of proof and respectfully prays that the Commission find that public convenience and necessity require the granting of the application.

Dated At:

Respectfully submitted,

Frank J. Weiner
Malcolm H. Flash

Attorneys for Applicant

15 Court Square
Boston, Mass. 02108

May 20, 1974

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of May, 1974, served a copy of the foregoing document upon all parties of record in this proceeding, by mailing, by first class mail, postage prepaid, a copy thereof, properly addressed to each.

Frank J. Weiner

REVENUE DATA

OF

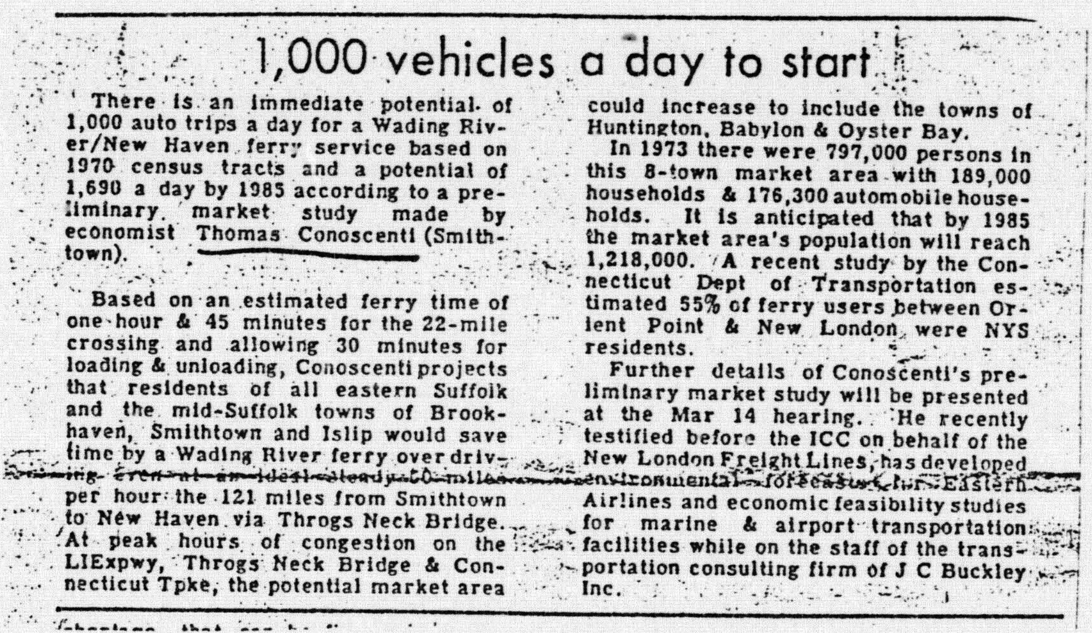
NEW LONDON FREIGHT LINES, INC.

(Taken From Annual Reports Filed With Interstate Commerce Commission)

	1972	1971	1970	1969	1968	1967
Water-Line Revenues	$878,351	$953,097	$887,780	$753,138	$684,817	$562,806
Water-Line Expenses	766,460	852,866	749,688	622,221	529,228	501,863
Net Revenue From Water Line Operations	$111,891	$100,231	$138,092	$130,917	$155,589	$ 60,943

Appendix "A"

Appendix "B"



1,000 vehicles a day to start

There is an immediate potential of 1,000 auto trips a day for a Wading River/New Haven ferry service based on 1970 census tracts and a potential of 1,690 a day by 1985 according to a preliminary market study made by economist Thomas Conoscenti (Smithtown).

Based on an estimated ferry time of one hour & 45 minutes for the 22-mile crossing and allowing 30 minutes for loading & unloading, Conoscenti projects that residents of all eastern Suffolk and the mid-Suffolk towns of Brookhaven, Smithtown and Islip would save time by a Wading River ferry over driving even at an ideal steady 50 miles per hour the 121 miles from Smithtown to New Haven via Throgs Neck Bridge. At peak hours of congestion on the LIExpwy, Throgs Neck Bridge & Connecticut Tpke, the potential market area could increase to include the towns of Huntington, Babylon & Oyster Bay.

In 1973 there were 797,000 persons in this 8-town market area with 189,000 households & 176,300 automobile households. It is anticipated that by 1985 the market area's population will reach 1,218,000. A recent study by the Connecticut Dept of Transportation estimated 55% of ferry users between Orient Point & New London were NYS residents.

Further details of Conoscenti's preliminary market study will be presented at the Mar 14 hearing. He recently testified before the ICC on behalf of the New London Freight Lines, has developed environmental forecasts for Eastern Airlines and economic feasibility studies for marine & airport transportation facilities while on the staff of the transportation consulting firm of J C Buckley Inc.

Appendix "C"
(Page 1 of 2 pages)

PHILIP J. OFRIAS, JR.
ATTORNEY AT LAW
TELEPHONE: 516-727-3646

737 ROANOKE AVENUE
P. O. BOX 462
RIVERHEAD, NEW YORK 11901

March 27, 1974

Mr. Foster R. Herman, Esq.
206 Masonic Building
New Bedford, Massachusetts 02740

RE: Advine Realty Co. to Mascony
File No. R-4024

Attention: Peter F. Staiti

Dear Mr. Staiti:

Enclosed herewith please find copy of Subordination Agreement, signed by Harry J. Mitchell and Pauline Mitchell, relative to the above matter.

Please be advised that the Agreement was duly filed in the Office of the Suffolk County Clerk on March 22, 1974.

Thank you very much.

Sincerely,

Philip J. Ofrias, Jr.
Philip J. Ofrias, Jr.

PJO:jg
Enclosure

Appendix "C"
(Page 2 of 2 pages)

In consideration of ten ($10.00) dollars and other valuable consideration, we, HARRY J. MITCHELL and PAULINE MITCHELL, his wife, presently residing at 127 B Bay Avenue, Green
New York , mortgagees of a mortgage dated May 12, 1972, by ADVINE REALTY CORP. to HARRY J. MITCHELL and PAULINE MITCHELL, 115 FRONT ST, GREENPORT, Town of Southold which mortgage was recorded in the Suffolk County Clerk's Office on June 13, 1972 at Liber 6385, page 404, hereby give our approval and consent to the leases between ADVINE REALTY CORP. and MASCONY TRANSPORT AND FERRY SERVICE, INC., dated February 16, 1974, and said leases shall in all respects be prior and paramount to our mortgage.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 14th day of March, 1974.

Harry J. Mitchell
HARRY J. MITCHELL

Pauline Mitchell
PAULINE MITCHELL

STATE OF ARIZONA)
COUNTY OF MARICOPA) ss.:

On the 14th day of March, 1974 before me came HARRY J. MITCHELL and PAULINE MITCHELL, to me known and known to me to be the individuals described in and who executed the foregoing instrument and who acknowledged to me that they executed same.

Geraldine E. Terry
NOTARY PUBLIC
Commission Expires Oct. 13, 1977

NOTARY PUBLIC CERTIFICATE

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

I WILSON D. PALMER Clerk of the Superior Court, the same being a Court of Record of the aforesaid County having by law, a seal do hereby certify that

GERALDINE E. TERRY

by whom the foregoing acknowledgment was taken, and whose name is subscribed hereto, was at the time of taking the same, a Notary Public, residing in said County, duly commissioned and sworn and authorized by the laws of the said State to take the proof of acknowledgment of deeds and other instruments in writing to be recorded in said State, and to administer oaths or affirmations in said County. I also certify that a copy of the Notary Seal and original signature is not required to be filed by the Statutes of Arizona.

In WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, which is the seal of said Court.

This 15 day of MARCH 1974.

DOCUMENT 186

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

Mascony Transport And Ferry Service, Inc.

MOTION TO STRIKE OR ALTERNATIVELY TO REOPEN THE RECORD FOR RECEIPT OF ADDITIONAL EVIDENCE

NEW LONDON FREIGHT LINES, INC.
BRIDGEPORT & PORT JEFFERSON STEAMBOAT CO.

By Peter A. Greene
Their Attorney

Of Counsel:

MACLEAY, LYNCH, BERNHARD & GREGG
1625 K Street, N. W.
Washington, D. C. 20006

Dated: June 10, 1974

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

Mascony Transport And Ferry Service, Inc.

MOTION TO STRIKE OR ALTERNATIVELY TO REOPEN THE RECORD FOR RECEIPT OF ADDITIONAL EVIDENCE

Comes now New London Freight Lines, Inc. (NLFL) and Bridgeport & Port Jefferson Steamboat Co. (B&PJ) protestants in the above captioned proceeding and respectfully move that certain material appended to the brief filed herein on behalf of applicant be stricken from the record, or alternatively, that the record in this proceeding be reopened for the limited purpose of receiving the supplemental materials attached hereto as Appendices A & B.

I

By order served March 26, 1974, the record in this proceeding was closed as of March 19, 1974, and it was ordered that briefs be filed on or before May 6, 1974. By order of May 1, 1974, the due date for filing briefs was later extended to May 23, 1974. On the latter date Mascony Transport And Ferry Service, Inc., (Mascony), applicant herein, timely filed its brief.

Preliminarily, NLFL and B&PJ wish to make clear that, although they take issue with the accuracy of several of the representations made in the applicant's brief they assume that any such representations, to the extent that they are without support in the record, will be recognized by the judge and the Commission as merely unsubstantiated argument of counsel and accorded no evidentiary weight. Therefore, this motion does not seek to have stricken any such representations. Rather, it is directed solely to certain materials submitted as appendices to applicant's brief and the references thereto in the text of the brief.

Specifically, NLFL and B&PJ request that the following items be stricken:

1. Appendix B;

2. The paragraph appearing at page 21 beginning with the words "It is further interesting to note. . ." and ending with the words ". . . west of Greenport, Long Island.";

3. Appendix C;

4. The language beginning on the ninth line of page 30 with the words "To satisfy all parties . . ." and continuing through and including the 17th line on page 30 ending with the words ". . . March 22, 1974."

II

The apparent purpose of the first two items to which this motion is directed is to discredit the testimony of Thomas Conoscenti, an economic consultant who testified on behalf of these protestants. This is done by appending to the brief what appears to be a newspaper clipping of undisclosed origin containing language which, as construed by the objectionable language appearing at page 21 of the brief, would appear to contradict the sworn testimony presented by Mr. Conoscenti in this proceeding. Such an unidentified statement would have been inadmissible if it had been tendered at hearing or even if applicant had tendered it as a late filed exhibit pursuant to Rule 86 of the Commission's Rules of Practice (49 C.F.R. 1100.86). However, applicant's attempt to place such material before the Commission for its consideration under the guise of an

"Appendix" to its brief is doubly objectionable since it compounds the substantive deficiency of the material with defective procedure.

Movants submit that if any evidence relative to the study referred to in Appendix B to applicant's brief is received in the record it should be the study itself, a copy of which is attached hereto as Appendix A and tendered for receipt by the Commission as an alternative to the motion to strike. Reference to that study dispels any suggestion of inconsistency with the testimony presented by Mr. Conoscenti in this proceeding and underscores the perils of relying upon news reports for accurate descriptions of technical and detailed information.

If, however, the rule of the case is to be the receipt of news stories as evidence of the events which they purport to reflect these protestants submit that the news report attached hereto as Appendix B is far more relevant and probative than that tendered by applicant as an Appendix to its brief. Specifically, the attached news story is particularly pertinent with regard to applicant's assertions at pages 4 and 5 of its brief suggesting that its proposal has met with the approval of cognizant state agencies subject only to minor corrective action. As can be seen from Appendix B applicant apparently had reason to know, as of the date that its brief was submitted to the Commission, that it still faced very formidable opposition from those agencies.

III

One of the many unresolved impediments to the operational feasibility of applicant's proposal as of the close of the record herein was the fact that the express written approval required before applicant could undertake the demolition necessary for it to have practicable access to its proposed landing site at Greenport had not yet been obtained. Appendix C to applicant's brief is apparently intended to cure this defect. Aside from providing further evidence of applicant's lack of fitness by again demonstrating its ability to recognize and respond to essential prerequisites to a viable operation only after they are pointed out to it by others, the tendered document provides no probative evidence of any fact relevant to this proceeding. It is simply a mortgage subordination agreement which does not give the slightest indication of any intention to approve of the major demolition project proposed by applicant. Without an opportunity to cross-examine the persons who executed it there is no way to establish with any reasonable degree of assurance what representations were made to them in order to elicit such a document. If applicant had demonstrated good faith by tendering the document promptly upon receipt some two full months before the filing of its brief together with a request that it be received as evidence thus affording other parties a right to make a timely request for cross examination or, at the very least, had filed an accompanying verified statement setting forth the circumstances of its execution, it might have been entitled to some favorable consideration. However, by waiting until the due date for filing of simultaneous briefs, thereby depriving other parties of any opportunity to respond to its tender, applicant has by its a action foreclosed itself from any favorable consideration it might have been given for receipt of its tendered evidence in the face of the well established rule to the contrary. See, for example, Home Transport Co., Inc. - Purchase - Fuchshuber, 109 M.C.C. 779, 787 (1971) wherein the Commission made the following comments which are directly controlling on this point:

> It is unfortunate that some dispute has arisen between applicants and protestants concerning the meaning and impact to be accorded to the restrictions contained in vendor's intrastate certificate. We say unfortunate because the means used in an attempt to settle the question are unsatisfactory and should not have been employed. While the Commission has provided in its Rules of Practice for

> the submission of late-filed exhibits[4] in order to supplement the evidence presented at a hearing, we think it necessary that such evidence be essentially of a noncontroversial nature. The wording of rule 86 clearly indicates such a submission to be an exception to the usual rule that evidence will not be received after the close of the hearing. Indeed, the sequence of contradictory claims and counterclaims by protestants and applicants as to the meaning of those restrictions and the proper authority for construing them illustrate graphically why this Commission in general forbids the receipt of material evidence after the record has been closed and the opportunity for examination and cross-examination has been ended. In particular, we think that such evidence should not form the entire basis for approval or denial of the application. Accordingly, we find that the receipt in evidence of the purported late-filed exhibits by protestant seeking to define and explain the Wales Record and Union City restrictions by reference to the opinions of the attorney general of Texas and the reliance upon them by the hearing examiner was improper, and such evidence will not be considered in making our decision. Similarly, the letters attached to their petition by which applicants also seek to construe the restrictions will not be received in evidence.
>
> ---
>
> [4] Rule 86 (49 C.F.R. 1100.86).

Here, when the tendered material relates to the highly controversial and, indeed, pivotal issue of applicant's fitness, it must be rejected.

IV

WHEREFORE, for all of the foregoing reasons NLFL and B&PJ respectfully move for issuance of an order striking the material to which this motion is directed so that it may be clearly understood that such material is not part of the record and therefore will receive no consideration by the Judge or the Commission in the resolution of the vitally important issues embodied in this case. Alternatively, NLFL and B&PJ request that the materials attached hereto as Appendices A and B be received into evidence.

Respectfully submitted,

NEW LONDON FREIGHT LINES, INC.
BRIDGEPORT & PORT JEFFERSON

By_________________________
Peter A. Greene

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served upon counsel for all parties of record via first class mail, postage prepaid, this 10th day of June 1974.

____
Peter A. Greene

LONG ISLAND MID-SUFFOLK BUSINESSMENS' ACTION
PUBLIC HEARING

- - - - - - - - - - - - -

SHOREHAM/WADING RIVER, LONG ISLAND TO NEW HAVEN CONNECTICUT, FERRY CROSSING

- - - - - - - - - - - - -

March 14, 1974

- - - - - - - - - - - - -

STATEMENT
OF
THOMAS CONOSCENTI

- - - - - - - - - - - - -

Gentlemen, my name is Thomas Conoscenti and I reside in Smithtown, Long Island. I am an economist and recently at the request of the New London Freight Lines I conducted a study evaluating the market for Competetive Ferry Service at Orient Point, Long Island. This study was presented before the Interstate Commerce Commission during a recent hearing at Greenport, Long Island in a connection with an application before the commission.

On the basis of the study, we concluded that the economic environment within the market area could not support competitive ferry service at the eastern end of Long Island. In our opinion, one strong ferry service would be a better aid to transportation, rather than two weak services.

Our conclusions were based on an an analysis of the market area which included the townships east of and including Brookhaven. This geographical area was used as a basis for analyzing the market. The potential market for ferry service in 1970 was estimated to be 408 average daily auto trips reaching a level of 663 trips by 1985.

The analytical concepts and data which were applied to the Orient Point, Long Island - New London, Connecticut crossing were also applied to the Shoreham/Wading River, Long Island - New Haven, Connecticut crossing which are the points in question at this proceeding. On the basis of our preliminary findings we conclude:

* The prime market area for ferry service between Shoreham/Wading River, Long Island and New Haven, Connecticut includes the following townships:

- Islip
- Smithtown
- Brookhaven
- Southhold
- Southhampton
- Riverhead
- Easthampton
- Shelter Island

* The total population in the market area in 1973 was estimated to be 797,000 persons.

* The number of automobile/households in the market area in 1970 was 176,300.

* The potential annual usage is estimated to be:

1970	1,000
1975	1,190
1980	1,420

CONCLUSION

In conclusion, our preliminary study indicates that there exists a potential market for cross sound ferry service between the points Shoreham/Wading River, Long Island and New Haven, Connecticut.[1]

We recommend that L.I.M.B.A. encourage both the States of New York and Connecticut and the various state agencies to conduct detailed studies for a cross sound ferry service. These studies should be conducted focusing on the following points:

---

1. Appendix A details our preliminary investigation.

Community of Interest

Analyze the existing economic relationship between the Long Island Region and the New England Region.

Industrial Composition

Analyze the industrial composition of both regions to determine whether these industries can be integrated.

Overall Economic Impact

Analyze the overall economic impact of ferry service on all sectors of the region's economy.

Furthermore, we suggest that Suffolk County actively participate in any studies conducted by the various state agencies in order to insure that the recommendations of these studies are compatible with the Bi-County's Master Plan.

I hold a B.S. degree in economics and finance and an M.A. degree in economics from New York University. I am currently a candidate for a Ph.D. in Economics at the same institution investigating expenditure patterns of local governments. In addition, I served as a member of the faculty of the Department of Economics at N.Y.U. teaching courses in economics. I have also taught economics courses at the Stony Brook campus of the State University of New York and at the Suffolk County Community College.

My professional experience includes three and one-half years with the Economic Planning Department of Eastern Air Lines Inc., as a Senior Economic Analyst/Forecasting. During my service with Eastern, I developed environmental forecasts for Eastern's short and long-range Operating Plans. In addition, I completed a variety of specialized economics projects.

Prior to joining Eastern I served as a staff economist with the firm of J. C. Buckley, Inc., Transportation Consultants. During my tenure with the Buckley firm I conducted or participated in a number of economic and financial feasibility studies for airports and marine terminals.

Prior to my service with the Buckley firm I served in the Research and Statistical Department of the Coca-Cola Export Corporation where I developed statistical profiles on various international markets.

(516) 724-5470

Thomas Conoscenti
ECONOMIST
7 CANTERBURY LANE
NESCONSET, LONG ISLAND 11767

A PRELIMINARY ANALYSIS:

The Market For Ferry Service

between

Shoreham/Wading River, Long Island

and New Haven, Connecticut

FINDINGS & RECOMMENDATIONS

This explortatory study evaluates the potential market for ferry service between Shoreham/Wading River to New Haven Connecticut. On the basis of our preliminary findings we conclude

** The prime market for ferry service includes the following Townships:

*Islip *Southhampton
*Smithtown *Riverhead
*Brookhaven *Easthampton
*Southhold *Shelter Island

** The total population on the market area in 1973 was estimated to be 797,000 persons.

** The number of households in the market area in 1970 was 189,000.

** The number of automibles/households in the market area in 1970 was 176,300.

** The extimated potential annual usage for ferry service in 1970 was 365,000 trips.

** It is anticipated that by 1985 the potential trips will reach a level of 616,850.

In addition, we recommend that L.I.M.B.A. encourage both the States of New York and Connecticut and the various state department agencies to conduct detailed studies for a cross sound ferry service. These studies should be conducted focusing on the following points:

Community of Interest

Analyze the existing economic relationship between the Long Island Region and the New England Region.

Industrial Composition

Analyze the industrial composition of both regions to determine whether these industries can be intergrated.

Overall Economic Impact

Analyze the overall economic impact of ferry service on all sectors of the region's economy.

In addition, we suggest that Suffolk County actively participate in any studies conducted by the various state agencies in order to insure that the recommendations of these studies are compatible with the Bi-County's Master Plan.

INTRODUCTION

The purpose of this preliminary study is to define the market area for ferry service at Shoreham/Wading River to New Haven, Connecticut. In order to evaluate the potential market area, it is necessary to evaluate the total environment within which this market lies.

This study will review that environment and delineate from it an area which could be served by ferry service at the Shoreham/Wading River site.

BI-COUNTY REGION[1/]

The population in the Bi-County region during the 1960/70 period grew at an average annual rate of 2.6% from a 1960 level of 1,967,000 persons to 2,556,000 persons in 1970, as recorded by the Bureau of the Census. It is anticipated that by 1985 the total population in the Bi-County region will reach 3,313,000 persons which reflects a net increase of 652,000 persons to the region over the next twelve years.

The approximate center of population for the region has moved slightly from 40°44' N latitude and 73°63' W longitude in 1960 to 40°44' N latitude and 73°63' W longitude in 1970. Exhibit 1.00, 1.01, 1.02.

THE MARKET AREA FOR FERRY SERVICE

The prime market area which could be served by a ferry service at Shoreham/Wading River is delineated on the map in Exhibit 1.00. It encompasses an area east of and including the Townships of Smithtown and Islip.

The market service area was delineated from the Bi-County region by evaluating trip times between points on Long Island to New Haven, Connecticut via a land/bridge route and points on Long Island to New Haven, Connecticut via a land/ferry route. This is based on the assumption that individuals will minimize their travel time by utilizing one route of travel over another

---

[1/] The Connecticut State Department of Transportation conducted a survey during the summer of 1972, which revealed that 55% of the ferry users were New York State residents, while only 15% of the users were Connecticut residents. For the purpose of this analysis, we will review the Bi-County region as the environment in which to analyze the ferry service.

route of travel. The primary market area being delineated at the point where the individual receives no net advantage or disadvantage by choosing one route of travel over another route of travel.

$$\frac{M}{S} = TT_b, \quad \frac{M}{S} + F_t = TT_f$$

M = miles
S = average speed
F_t = ferry time
TT_b = trip time bridge
TT_f = trip time ferry

An individual receives a net gain in time by choosing the ferry route over the land route,

$$\text{when } TT_f < TT_b$$

An indidivudal receives a net loss in time by choosing the ferry route over the land route

$$\text{when } TT_f > TT_b$$

An individual receives no net gain or loss in time by choosing either the land or ferry route,

$$\text{when } TT_f = TT_b = \text{Market Delineation}$$

Exhibit 1.03 shows the computations for trip miles and times to New Haven, Connecticut from various points on Long Island. The point where $TT_b = TT_f$ lies east of Huntington Township. At this point, total traveling times via a land/bridge route of travel vs. total travel time via a land/ferry route of travel is equal.

THE MARKET AREA

* POPULATION

The population of the market area which could be served by a ferry service at Shoreham/Wading River in 1970 is shown in Exhibit 1,04. The market area's population in 1973 was 797,000 persons; this was equivalent to approximately 28.4% of the regions population. It is anticipated that by 1985 the market area's population will reach a level of 1,218,000 persons.

- HOUSEHOLD & AUTOMOBILES

  The market area contained 189,907 households in 1970, of which 92.8% or 176,317 of those households owned one or more automobiles. Exhibit 1.05.

POTENTIAL FERRY TRAFFIC

The potential ferry traffic between Shoreham/Wading River and New Haven, Connecticut is based on the assumption that each household with an automobile is a potential ferry user. In a recent study conducted by the Connecticut Department of Transportation, it was estimated that 55% of ferry users between Orient Point, Long Island and New London, Connecticut, are New York State residents. Based on that relationship, it is reasonable to estimate the total market in 1970 to be 321,000 auto households. Exhibit 1.06.

Destination U.S.A. prepared by the National Tourism Resources Commission, indicated that 63% of all United States households in 1972 took a trip, which 86% of those trips were by automobile. These relationships were utilized to develop an estimated total auto trip market for 1970.

The potential auto trips were converted into potential annual usage, based on the Connecticut Ferry Study. The potential annual usage for 1970 is estimated to be 365,800 trips. This translates into 1,000 potential average daily auto trips.

It is anticipated that by 1985 the potential average daily auto trips could reach a level of 1,690,000 trips per day. Exhibit 1.07.

- HOUSEHOLD & AUTOMOBILES

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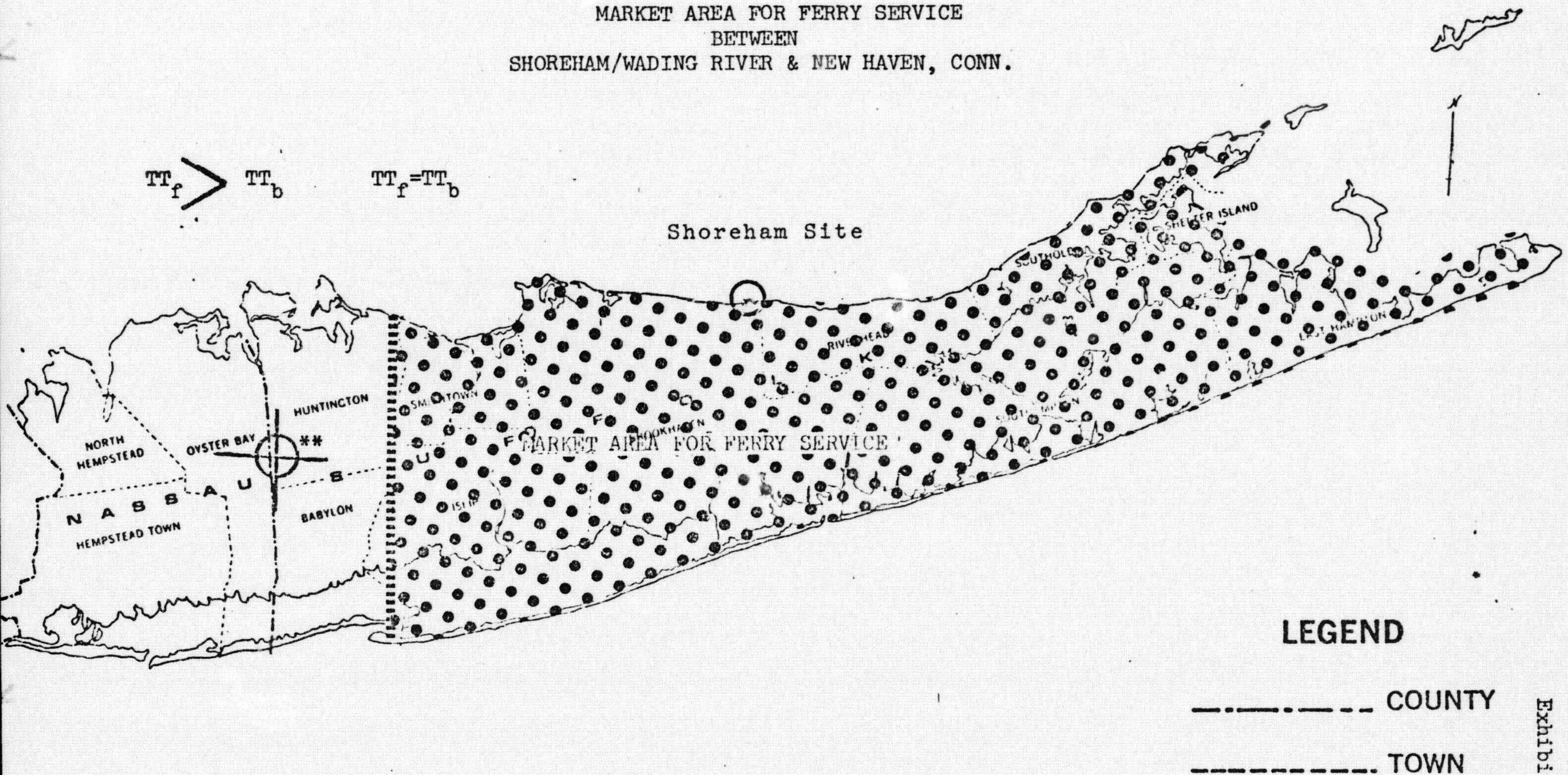
NASSAU-SUFFOLK REGIONAL PLANNING AREA

MARKET AREA FOR FERRY SERVICE
BETWEEN
SHOREHAM/WADING RIVER & NEW HAVEN, CONN.


$TT_f > TT_b$
$TT_f = TT_b$
Shoreham Site
NORTH HEMPSTEAD
OYSTER BAY
HUNTINGTON
**
N A S S A U
HEMPSTEAD TOWN
BABYLON
SMITHTOWN
ISLIP
S U F F O L K
BROOKHAVEN
MARKET AREA FOR FERRY SERVICE
RIVERHEAD
SOUTHOLD
SHELTER ISLAND
SOUTHAMPTON
EAST HAMPTON
N
LEGEND
COUNTY
TOWN

**Center of Population for the Region - 1970

Exhibit 1.00

POPULATION: NASSAU-SUFFOLK
BI-COUNTY REGION
1950, 1960, 1970

	1950	1960	1970	Percent Increase 1950 1960	Percent Increase 1960 1970
Nassau					
North Hempstead	142,613	219,088	233,007	53.62	7.27
Hempstead	448,092	767,211	834,719	71.22	8.80
Oyster Bay	82,060	313,872	359,112	82.49	14.41
Nassau Total	672,765	1,300,171	1,428,838	93.25	9.90
Suffolk					
Huntington	47,506	126,221	200,172	165.69	58.59
Babylon	45,556	142,309	203,870	212.38	43.05
Islip	71,465	172,959	278,880	142.02	61.24
Smithtown	20,993	50,347	114,657	139.83	127.73
Brookhaven	44,522	109,900	245,260	146.84	123.17
Riverhead	9,973	14,519	18,909	45.58	30.23
Southampton	17,013	27,095	36,154	59.26	33.43
Southold	11,632	13,295	16,804	14.29	26.39
East Hampton	6,325	8,827	10,980	39.55	24.39
Shelter Island	1,144	1,312	1,644	14.69	25.30
Suffolk Total	276,129	666,784	1,127,030	141.48	69.02
Bi-County Region	948,894	1,966,955	2,555,868	107.29	29.94

Source: Bureau of the Census

Exhibit 1.02

Exhibit 1.03

POPULATION PROJECTION
BI-COUNTY REGION
(000)

	1973	1985
Nassau	1,[illegible]	1,564
N. Hempstead	[illegible]	260
Hempstead	8[illegible]	922
Oyster Bay	366	387
Suffolk	1,216	1,744
Huntington	209	260
Babylon	210	267
Islip	300	374
Smithtown	119	165
Brookhaven	286	515
Riverhead	21	44
Southampton	39	67
Southold	18	28
Easthampton	12	22
Shelter Island	2	3
Bi-County Region	2,661	3,313

Source: Nassau-Suffolk Planning Department
: LILCO Population Survey

Trips Miles & Times to New Haven, Conn.
from Points on Long Island

	Route Via Throgs Neck Bridge		Route Via Shoreham/Wading River Ferry				
	Miles	Trip Time	Miles	Trip Times	Ferry Time	Total Trip Time	Elapsed Time
Riverhead	152	3:05	12	:15	1:45	2:00	+ 1:05
Southampton	169	3:20	28	:35	1:45	2:25	+ :55
Patchogue	130	2:35	17	:20	1:45	2:05	+ :30
Shoreham	132	2:40	-0-	-0-	1:45	1:45	+ :55
Port Jefferson	135	2:40	11	:15	1:45	2:00	+ :40
Smithtown	121	2:25	18	:25	1:45	2:10	+ :15
Huntington	112	2:15	33	:40	1:45	2:25	- :10
Central Islip	124	2:30	21	:25	1:45	2:10	+ :20
Oyster Bay	86	1:45	56	1:10	1:45	2:55	- 1:10
Hempstead	77	1:35	60	1:15	1:45	3:00	- 1:25
Glen Cove	81	1:35	65	1:20	1:45	3:05	- 1:30

Source: Mileages provided by AAA
: Trip Time based on driving speed of 50 miles/hour
: Ferry Time 1:15 plus 30 minutes for loading and unloading

Exhibit 1.03a

Exhibit 1.04

Primary Market Area-Ferry Service
Population of Market Area
(000)

	1970[1]	1973[2]	1985	Net Increase
Bi-County Region	2,556	2,661	3,313	652
Market Area	725	797	1,218	421
Smithtown	115	119	165	46
Islip	279	300	374	74
Brookhaven	246	286	515	229
Riverhead	19	21	44	23
Southampton	36	39	67	28
Southhold	17	18	28	10
Easthampton	11	12	22	10
Shelter Island	2	2	3	1

---

[1] Bureau of the Census.

[2] L.I.L.CO Estimates for 1973

Exhibit 1.05

ESTIMATED NUMBER OF HOUSEHOLDS OWNING ONE OR MORE AUTOMOBILES IN THE MARKET AREA

1970

Market Area[1]	Total Households[2]	Auto Ownership[3]	Auto Household
Smithtown	27,037	96.5%	26,090
Islip	68,370	93.2	63,720
Brookhaven	65,989	92.4	60,978
Riverhead	6,084	88.5	5,385
Southampton	12,123	89.9	10,899
Southold	5,829	87.9	5,124
Easthampton	3,837	90.9	3,488
Shelter Island	646	98.9	638
	189,907	92.8%	176,317

Source:

1/ Exhibit #1.04
2/ Suffolk County Planning Commission
3/ 1970 Census - Table H-2

Exhibit 1.06

ESTIMATED AUTO TRIP MARKET
1970

Market Area Auto Households (Exhibit 6.00)	176,500
New York State Residents Represents 55% of total Orient Point-New London Travel (1972)[1]	55%
Estimated Total Market	321,000
Household Trips[2]	63%
Estimated Household Trips	202,000
Percent of Travel by Auto	86%
Estimated Auto Household Trips	174,000

Preliminary Market Analysis

Estimated Potential Auto Trips 174,000

Purpose of Trip[1]

Pleasure	75.9%	132,000
Business	24.1%	42,000

Business Potential 20,500

Estimated Frequency of Use		Business Trips	Multiple Trips	Annual Usage
More than Once a Week	3.5%	1,470	78	114,700
Once a Week	4.5	1,890	39	73,700
Once a Month	12.0	5,040	9	45,400

Estimated Total Annual Business Usage---------------------- 233,800
Estimated Total Annual Pleasure Usage ---------------------- 132,000

Potential Annual Usage-- 365,800

Potential Average Daily Automobile Traffic

1970	1,000
1975	1,190
1980	1,420
1985	1,690

---

[1] Based on Connecticut Ferry Study

Exhibit 1.07

Preliminary Market Analysis

Estimated Potential Auto Trips 174,000

Purpose of Trip[1]

Pleasure	75.9%	132,000
Business	24.1%	42,000

Business Potential 20,500

Estimated Frequency of Use		Business Trips	Multiple Trips	Annual Usage
More than Once a Week	3.5%	1,470	78	114,700
Once a Week	4.5	1,890	39	73,700
Once a Month	12.0	5,040	9	45,400

Estimated Total Annual Business Usage------------------ 233,800
Estimated Total Annual Pleasure Usage ---------------- 132,000

Potential Annual Usage--- 365,800

Potential Average Daily Automobile Traffic

1970	1,000
1975	1,190
1980	1,420
1985	1,690

[1] Based on Connecticut Ferry Study

APPENDIX B

Proposed Long Island Ferry Is Running Into Snags

NEW LONDON — A Massachusetts firm's year-old effort to establish a ferry service between the city and Greenport, Long Island ran into two barriers — one old and one new — at a public hearing at City Hall Tuesday night.

The old barrier — opposition by the Penn Central Railroad to use of a private rail crossing for loading and unloading of the ferry — has confronted the firm at several past public hearings.

The new barrier — opposition to the rail crossing by officials of the state Public Utilities Commission (PUC) — may lead to further delays in plans to operate the ferry from a slip off Bank Street.

Tuesday's hearing was conducted by the state Department of Environmental Protection. DEP's inquiry is centered on the environmental impact of the proposed reconstruction of a pier behind DeNoia Brothers' Hardware Store on Bank Street.

Mascony Corp. of New Bedford, Mass. has an option to buy the DeNoia property and wants to reconstruct the existing pier, which is just east of the Shaw's Cove railroad bridge. The firm would build a parking lot for 113 cars on land where the hardware store and a number of other small buildings now stand.

The Penn Central and PUC officials opposed the crossing for safety reasons. The sight lines on either side of the crossing are not sufficient for even slow-moving trains to avoid hitting any car stopped on the crossing, they said.

George R. Power, the Mascony president, has plans to install a fencing and signal system and to have three men control the flow of cars across the tracks and on and off the ferries. But even that would not be enough, said Kenneth D. Faust, a PUC engineer.

"Cars getting off the ferry will undoubtedly be crowded bumper-to-bumper across the tracks," Faust said. "It's human nature.

"I can just see drivers getting out of cars and standing by the fence to watch the train take their cars away."

The Mascony ferries would have a capacity of 100 cars.

None of the five persons who opposed the Mascony application said he was against the idea of the ferry service, only the crossing conditions.

The plan was supported by New London City Councilors Ruby Turner Morris and Thomas Harrington and Groton City Mayor Donald B. Sweet. Mrs. Morris called the present New London-Orient Point, L.I. service inadequate and said the new service is badly needed.

The City Council agreed Monday night to allow City Manager C. Francis Driscoll to negotiate a temporary contract with Mascony for use of the Municipal Pier. Power, the Mascony president, described any use of the facility at the foot of State Street as temporary until permanent arrangements are made at the DeNoia site.

But, several persons at the hearing suggested the permanent use of Municipal Pier might be an attractive alternative to the crossing problems at the Bank Street location.

The PUC has jurisdiction over any change in use for rail crossings and would have to hold a public hearing on and grant a permit for the increased use at Mascony's proposed location. But, Faust said the lower State Street crossing already has full approval for all types of traffic.

Power, showing the exasperation of a man who has negotiated with federal and state agencies for over a year, was reluctant to change plans and face the need for a new round of applications.

The Mascony president said he is expecting a favorable decision on his overall ferry service plan from the Interstate Commerce Commission any day. The ICC, which sponsored hearings last year in New London and Greenport, has authority for licensing the overall [illegible] but [illegible] it [illegible] for the rail crossing with other [illegible].

In addition to the DEP, the Penn Central and city officials [illegible] only [illegible] few private [illegible] attended the hearing. The DEP will receive [illegible] Mascony plans [illegible] them [illegible] decision.

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15" PORTABLE CHARCOAL GRILL
[illegible] 37
Reg. 4.49
SAVE 25%
24" high grill with removable legs for easy transport to picnics or the beach. Nickle-chrome

Heavy duty vinyl [illegible]
aluminum frame. [illegible]

DOCUMENT 188

No. W-1270

1887

SERVICE DATE

JUN 19 1974

Interstate Commerce Commission

Certificate of Service

The SECRETARY of the Interstate Commerce Commission hereby certifies that the attached initial decision of the Administrative Law Judge has been filed with and duly made part of the record herein and has this date been served upon all known parties in the manner provided by law and the regulations of this Commission.

Exceptions to said decision, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D.C. 20423, and served on all other parties of record within 30 calendar days (20 days if there are no other parties) from the date of service shown above. Replies thereto may be filed within 20 calendar days after the final date for filing exceptions. If either date falls upon a Saturday, Sunday, or legal holiday, then the applicable pleading must be filed by the end of the next business day.

If no exceptions are filed to the initial decision, and it is not stayed by the Commission, the initial decision becomes the order of the Commission by operation of law upon expiration of the period for filing of exceptions. The parties to this proceeding are warned that it should not be assumed that the initial decision has become effective as the order of the Commission by operation of law until a notice to that effect has been received.

In addition, any new operation to be authorized by the initial decision, if it becomes the order of the Commission by operation of law, may not be commenced until a certificate, permit, or license, as the case may be, has actually been issued by the Commission. A certificate, permit, or license will not be issued until the applicant has complied with the provisions of the Interstate Commerce Act and the requirements of the Commission thereunder as specifically set forth in the initial decision.

Robert Oswald

ROBERT L. OSWALD
Secretary

(SEAL)

OH

INTERSTATE COMMERCE COMMISSION

INITIAL DECISION

No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC. INITIAL OPERATIONS - NEW LONDON TO GREENPORT, L. I., NEW YORK

Application seeking a certificate of public convenience and necessity authorizing the transportation as a common carrier by water, of general commodities and passengers by self propelled vessels, between the ports of New London, Conn., and Greenport, L. I., N. Y., denied because of operational considerations: safety at New London and environmental at Greenport.

Frank I. Weiner, Malcolm H. Flash, and William J. Augello for applicant.
Gerard M. McAllister, Donald Macleay, Peter A. Greene, Robert W. Tasker, and Irving L. Price, Jr., for protestants.
William J. Lynch for the State of Connecticut, Department of Transportation.
Frederick Goldfeder for the State of New York, Department of Transportation.
John J. Munzel for the Village of Greenport, L. I., New York.

By David H. Allard, Administrative Law Judge:

By application filed May 29, 1973, Mascony Transport and Ferry Service, Inc. of New Bedford, Mass., seeks authority to engage in operation, in interstate or foreign commerce, as a common carrier by water in the transportation of general commodities and passengers by self-propelled vessels, between the ports of New London, Conn., and Greenport, Long Island, New York. The proceeding was assigned to the Administrative Law Judge for hearing and the recommendation of an appropriate order thereon. Hearings were held at New London, Conn. on October 29, 30, 31, and November 1, 1973; at Greenport, Long Island, N. Y., on December 10, 11, 12, and 13, 1973, and January 8, 9, 10, 1974; and at Washington, D. C. on February 20, 1974. Briefs were filed on May 23, 1974, by applicant and jointly by protestants New London Freight Lines, Inc. and the Bridgeport and Port Jefferson Steamboat Co.[1]

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[1] Protestants Shelter Island & Greenport Ferry Co., Inc. and East End Supply Co., Inc. did not file briefs.

Applicant: Mascony is a Massachusetts corporation, organized on February 15, 1973, with its principal place of business Room 206, Masonic Building, 558 Pleasant Street, New Bedford, Mass. The operation here sought was conceived by its president during 1971 and 1973 when he served as a deck hand on a protestant New London Freight Lines vessel. In October 1973 its balance sheet showed assets of $114,145 in cash; real estate of $203,000; a vessel (S. S. New Jersey,[2] renamed S. S. Greenport) of $376,417; deposit on three other vessels of $50,000;[3] and other assets for a total of $878,000. Its liabilities amounted to $550,000 with stockholder's equity of $328,000.

Facilities: With regard to terminal facilities, applicant has entered into agreements for the purchase of waterfront property in downtown New London. Spacewise, the property will accommodate about 213 automobiles. To accomplish the preparation of the site, applicant's representatives have met with the Connecticut Department of Transportation, the Bureau of Waterways, the City of New London and the Connecticut Department of Environmental Protection. Applicant's proposal appears to have the approval of the officials of each of those agencies, subject to certain matters being corrected, particularly with regard to grade crossings over the New York-Boston mainline of the Penn Central Railroad. The property also will require extensive improvement, including the demolition of buildings and the construction of docking facilities

At Greenport, applicant's facilities would be located in the heart of the business district of the village. Renovation of the parking lot facilities as well as the docking facilities would be required. The parking facilities are not contiguous to the docking area.

Ferry Operations: Applicant is proposing year-around service with one round trip - New London to Greenport and return - from January 1 to May 1 - July 31, two round trips daily; August 1 to September 30, four round trips daily; and from October 1 - December 31, one round trip daily or "as needed."[4] A space reservation system would be in effect for part of the available vessel space. During its projected first year of operation, applicant anticipates a gross revenue of $1,333,149, with expenses of $657,876. The basis of applicant's projection was a study conducted by the Connecticut Department of Transportation[5] and the judgment of applicant's president who believes that there is an untapped source of passenger and vehicular traffic during the early part of the year with the movement of seed potatoes from points in Maine to eastern Long Island and other "joint motor-water-motor freight traffic." However, applicant's expenses appear to be understated to the extent of not including materials cost for water and lubricants, officers salaries, some rental expenses, attorneys and accountant fees, state payroll taxes, shoreside utilities, site preparation and complete insurance coverage expenses.

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[2] The vessel, steam powered and built in 1936, was purchased for $350,000 in March 1973. It was lengthened and modernized in 1954 and refurbished in 1964. It has a carrying capacity of 100 automobiles: a mixed load of 85 cars, truck-trailers, and licensed passenger capacity of 800.

[3] Applicant has also entered into an agreement with the Delaware River & Bay Authority for the purchase of three additional vessels known as the S. S. Delaware, S. S. Cape May, and M. V. Cape Henlopen.

[4] The weather conditions often dictate whether crossings can be made.

Applicant proposes to man the S. S. Greenport with stockholders and directors and only if necessary, would propose to hire members of the Brotherhood of Marine Officers or the Marine Engineers Beneficial Association.

Appropriate docking plans for New London and Greenport were made a matter of record. At Greenport, all parties of record had an opportunity to view the proposed facilities early in the morning on December 13, 1973. At that time applicant's president outlined the entire Greenport operation, with some modification later developed.

Almost 100 public witnesses testified in support of the application. They represented almost every conceivable background and occupation.[6] They came from representative points in all of the New England States and particularly the eastern half of Long Island. They used the ferry when their travels were for business as well as pleasure or family requirements, including truckers.

Their complaints of the existing service centered around excessive waiting periods of up to 6 hours, particularly during the summer months; inability to board ferries with automobile, and sometimes even as foot passengers; inadequacies of convenience facilities; excessive traffic congestion at New London, and Orient Point, Long Island; inabilities of truckers to use existing ferry service because of excessive waiting time which would cause excessive hours of service by drivers; and the inconvenience of sleeping in the truck or car at docks in order to assure space on vessel.

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[5] As pertinent here, the report of the Connecticut Department of Transportation, Bureau of Planning and Research, reached the following general conclusions: (1) that peak summer demand was not always satisfied during past years; (2) that present summer service is definitely inadequate to meet demand; and (3) that New York residents use the ferry service and than Connecticut residents by a four to one ratio.

[6] Hearings were frequently held in the evenings for the convenience of the public.

Protestants: New London Freight Lines, Inc. (NLFL) and the Bridgeport and Port Jefferson Steamboat Co. (B & PJ) are controlled by McAllister Brothers, Inc. in that NLFL is a wholly owned subsidiary of McAllister Bros.[7] and (P & BJ) is controlled by NLFL. NLFL is a carrier authorized by this Commission to operate a water common carrier by self-propelled vessels, in interstate or foreign commerce, in the transportation of (1) general commodities, automobiles with passengers, and tractors, trailers, and trucks, loaded and empty, between New London, Conn., on the one hand, and, on the other, Orient Point and Sag Harbor, L. I., N. Y., (2) passengers between New London and Orient Point, and (3) passengers and general commodities, including automobiles with passengers, and tractors, trailers, and trucks, loaded and empty between Orient Point and East Marion, Southold Township, N. Y., on the one hand, and, on the other, Saybrook, Conn., pursuant to a Third Amended Certificate, issued August 17, 1955, in W-939.

The McAllister interests own and operate in excess of 100 vessels with offices in Philadelphia, Pa., in Virginia, Puerto, Rico, and Montreal, Quebec, Canada. NLFL maintains certain personnel at New London, Conn., and Orient Point, Long Island but the overall general administrative services are provided from the parent's headquarters at 17 Battery Place, New York City. NLFL employs a resident port engineer at New London, Conn. He is in charge of the mechanical aspect of the vessels.

Since acquiring its authority NLFL has continuously provided regularly scheduled service in self-propelled vessels between Orient Point, N.Y., on the one hand, and, on the other, New London, Conn. NLFL holds itself out to transport foot passengers, passenger cars and their occupants, commercial vehicles up to and including large tractor trailer units carrying all types of commodities, and stowed cargo or packages. Because it serves as a connecting link between the important resort areas of eastern Long Island and southern New England the great preponderance of its traffic is accounted for by passenger vehicles on pleasure trips. As a result, NLFL's operations have always been extremely cyclical with the bulk of its traffic concentrated in the summer months, a sharp decline during the fall, virtually no traffic during the winter months and then a buildup during the spring. The seasonal variation in NLFL's traffic results in net operating losses in winter months and profits during the late spring, summer and early fall when it must make enough profit to offset its losses during the balance of the year.[8] No wide range promotion of services was evidenced.

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[7] Various members of the McAllister family are the officers and/or executives of NLFL. Neil McAllister, NLFL's general manager, maintains an office at 17 Battery Place, New York City which is also the corporate headquarters of the parent McAllister Brothers, Inc. Because of his involvement in other McAllister interests, Neil McAllister apparently has not, of late, been involved in the day-to-day activities of NLFL. Captain Tooker, the resident manager of NLFL, is domiciled at Port Jefferson, L. I., New York. Brent Lynch, is an assistant to NLFL general manager, Neil McAllister, and apparently works with Captain Tooker, with 80% to 90% of Lynch's time spent on NLFL.

NLFL's heavy dependence upon tourist traffic often results in sharp cyclical variations in equipment utilization within a single day. For example, even during a peak period day such as Friday, July 27, 1973, when NLFL had overflow traffic on many of its runs, it had a substantial number of empty spaces on many sailings during the same day. The erratic pattern of traffic flow causes NLFL constantly to be challenged with a need to balance equipment capacity against traffic demand. Although it would like to have enough equipment to satisfy peak demand during the summer months and during summer and holiday weekend peaks it has not been able to do so without incurring depreciation, labor and other costs associated with equipment ownership and operation which would offset its operating revenues by a substantial margin. This would result in a net loss operation and, eventually perhaps the complete demise of service. NLFL has always felt that its fundamental obligation is to insure continued availability of as much service as can be provided without sustaining a substantial net annual loss. Prior to 1963 it carried traffic to and from the U. S. Department of Agriculture facility at Plum Island, N.Y., and the revenue from that service permitted it to operate all year between Orient Point and New London. In 1963, the Department built its own terminals and vessels resulting in a sharp annual cut back in revenues. Because of this loss of traffic and revenues NLFL had to cut back its sailing season sharply in order to avoid unmanageable losses. Since 1963, it has gradually endeavored to extend its service with the ultimate objective of getting back to a full year-round schedule. In 1964 it operated from the end of May until the end of October. From 1965 through 1969 it extended its service into April. Since 1970 it has operated from March through January.

NLFL has also increased the frequency of its sailings, particularly during the peak summer months. During the 1973 season it operated three vessels. Two of those vessels have a capacity of 24 cars each for planning purposes but have carried more than that number of cars where the traffic consist included a large number of compact cars. The third vessel has a capacity of 18 cars for planning purposes but it also can carry a higher number when compact cars are being loaded. The sailing time between Orient Point and New London is approximately 90 minutes.[9] The two larger vessels, namely PLUM ISLAND and ORIENT, sail every two hours between 6:00 a.m. and 8:00 p.m. from New London and between 8:00 a.m. and 10:00 p.m. from Orient Point. The third vessel, CARIBBEAN FERRY, operated as a supplemental service at intervals interspersed between the sailing of PLUM ISLAND and ORIENT. The supplemental sailings of the CARIBBEAN FERRY were in addition to those shown on the 1973 schedule.[10] Service is on a first come, first serve, basis.

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[8] Although a modest assessment is made against NLFL for general and administrative services provided by the parent company, no assessment has ever been made for officers salaries. If such an assessment had been made it would have offset net profits in most years since NLFL is an operation of very marginal profitability.

NLFL appears to have worked with cognizant state transportation officials of both Connecticut and New York toward development of a program for continued improvement in its service. From NLFL's point of view, those efforts were severely hampered in recent years by the specter of a proposed bridge across Long Island Sound in the face of which NLFL did not believe it prudently could make a multimillion dollar commitment in new ferry equipment. For this reason, NLFL vigorously pressed for a resolution of the question of a cross-sound bridge which was accomplished in November 1972.

NLFL immediately commissioned Robert A. Simons, a naval architect who enjoys a reputation in the maritime community as one of the foremost authorities on ferry boat design and construction to design the most suitable and efficient type and size of ferry boat for service between New London and Orient Point. Mr. Simons was engaged for this undertaking many months before the Mascony application was filed with the Commission or known to NLFL. Early in 1973 Simons submitted plans for a ferry vessel[11] capable of carrying 40 to 50 vehicles and 300 to 400 passengers with a cruising speed of 20 m.p.h. Each of these new vessels would represent an increase of some 40% above the vehicle capacity of NLFL's two larger vessels. Each vessel would cost in excess of $1.8 million and NLFL would plan the eventually build up to five, as traffic warrants.[12]

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[9] All parties were offered the opportunity for a visual inspection of NLFL's facilities at both New London and Orient Point, which was accomplished.

[10] As noted in its brief, NLFL sincerely believes that it has provided the best possible service to the traveling public consistent with the circumstances under which it has had to operate it. However, it also "recognizes that room for further improvement exists and it is firmly committed to making such improvement if it is permitted to continue to operate without unwarranted diversion of traffic."

NLFL's decision to build the new vessels appears to be based upon a careful analysis of its past traffic and its projections of future traffic which would indicate that: (1) better service can be provided with a fleet of moderate sized vessels of high speed than by a smaller number of very large vessels such as Mascony proposes to operate since the former alternative permits greater frequency of service, more flexibility of operation, and less impact of individual vessel breakdown or maintenance; and (2) that operation of modern vessels which require manning levels of only 5 to 7 men will result in reduction in operating and maintenance cost sufficient to offset depreciation expense under 25 year government insured financing.

NLFL was also instrumental in supporting legislation recently enacted by the New York State Legislature authorizing low cost, long term loans for the purpose of upgrading terminal facilities. NLFL is currently developing plans to utilize such loans to improve its terminal facilities. On brief, NLFL unequivocally assures the Commission that it would have been much further ahead on its construction and modernization program if it had not been for the existence of the very real threat of a cross-sound bridge. Now that that threat has been removed NLFL emphasizes that it "will move forward vigorously, if it is not confronted by large scale diversion of its traffic by Mascony, which would be the unavoidable result of a grant of this application." NLFL firmly agrees that a responsive ferry service between Long Island and Connecticut is required by the public interest. Its position here, is that the potential traffic between the eastern tip of Long Island and southeastern Connecticut cannot support two competing services.[13] From its view point, the decision the Interstate Commerce Commission has to make here is not whether there shall be one or two services available to the public but rather which one of two services would be available. NLFL submits that its plan holds the greater promise of viable, responsive, adequate service to the public and that the Commission, in furtherance of the public interest, must deny the instant application so that NLFL may realistically go forward with its new construction program.

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[11] Design of the first ferry calls for a vessel of 217 feet, with a 42 foot beam and a 9 foot, 9 inch draft when fully loaded. Power will be furnished by two 1,025 h.p. GM diesel engines. A bow thruster will add maneuverability and speed up docking operations, and the latest automated navigational, communications, and safety devices will increase efficiency. A passenger lounge for 300 persons and a snack bar are features of the vessels, each of which will be manned by a crew of seven union-member officers and seamen.

[12] Plans for the first of this new series of vessels have been submitted to the U. S. Maritime Administration with a request for government insured financing pursuant to the provisions of Title XI of the Merchant Marine Act of 1936. A commitment letter for such financing has been received by NLFL from the Maritime Administration. A contract for construction of the first vessel has been negotiated with Atlantic Marine, Inc., Ft. George Island, Florida, and will be executed as soon as approved by the Board of Directors of NLFL.

B&PJ operates between Bridgeport, Conn., and Port Jefferson, N.Y., which is approximately at the midpoint of the north shore of Long Island. It operates pursuant to authority issued by the ICC in Docket No. W-271. B&PJ transports both passengers and vehicles on board the M/V MARTHA'S VINEYARD. The MARTHA'S VINEYARD is a motor vessel of 202 ft. length, 50 ft. beam, 586 gross tonnage, 33-vehicle capacity, 1061-passenger capacity and does 17 knots speed. The demand for B&PJ's service is also seasonal.

On the basis of general comments made by its passengers, B&PJ has concluded that many of them come from points far enough east of Bridgeport and Port Jefferson so that Mascony's proposed service might very well become competitive with its service. B&PJ does not operate at capacity most of the time. During the 1972 season, for example, it made 489 trips each way between Bridgeport and Port Jefferson, for a total of 978 one way trips. On only 312 of those sailings, 32 percent of the total trips, did it carry capacity loads of vehicles. It has never had a full capacity load of passengers.

B&PJ's profit margin is such that it feels that it could not afford to lose any traffic by diversion to Mascony. For example, during the 1972 season it had operating revenues of $433,976 and operating expenses of

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[13] NLFL introduced an economic study to support this position. However, as shown in Appendix 1, that study has little probative value for a conclusion that the market area cannot support competitive ferry lines.

$477,723 for a net loss of $43,747. It opposes this application because it believes that authorization of the proposed Mascony service would cause an unwarranted diversion of traffic which would ultimately and unavoidably result in demise of B&PJ's present under-utilized service.

Intervenors: The Connecticut Department of Transportation intervened for the purpose of bringing to the Commission's attention the "dangerous condition" existing at the location which Mascony proposes to use as its New London terminal. The "dangerous condition" is the fact that the main line of the Penn Central railroad traverses the property over which Mascony proposes to load and unload its vessel, as noted earlier.

The Shelter Island & Greenport Ferry Co., Inc., intervened in opposition to the application on the grounds that the operation proposed by Mascony would seriously impair the safe operation of the present ferry service between Shelter Island and Greenport which the residents of Shelter depend upon for access to the mainland of Long Island.

The East End Supply Company, Inc., a retail merchant operating a store located adjacent to the property that Mascony proposes to use as its Greenport terminal, intervened in opposition to the application. The basis for its opposition is that the proposed operation would cause serious traffic congestion in the downtown business district of Greenport.

The New York State Department of Transportation intervened in opposition to the application essentially on the grounds that the proposed Greenport terminal site of Mascony would result in acute traffic congestion in downtown Greenport.

The Village Planning Board Of The Village Of Greenport opposes the location of the proposed Mascony terminal at Greenport. Its position is that the location would be inconsistent with present and planned future use of the Greenport central business district and would so seriously aggravate an already badly congested traffic flow as to impair the basic character of Greenport and interfere with access by ambulances, police cars and fire equipment to emergencies occurring within the area. Although some of the bases for these concerns were alleviated by the revised proposal submitted by Mascony at the rebuttal hearing, the basic objection to the impact of the tremendous volume of traffic that would be generated appears to remain.

DISCUSSION AND CONCLUSIONS

The record here is clear and unequivocal that the existing ferry service leaves a great deal to be desired. Even protestant NLFL concedes this point. The long waits that the public endures to use the existing service, particularly during the summer and holiday week ends, contributed greatly to the emotional overtones extant to the uncontradicted testimony of a vast preponderance of the public witnesses. The scant public witnesses who testified in support of protestant NLFL say only that the service is adequate in the circumstances and thus begged the ultimate question of what adequate service to the public would be. For clearly the services here sought by the public for ferry service between New London and the eastern end of Long Island - be it Orient point or Greenport - exceed the capacity of existing services for a good part of the year.

So the ultimate question revolves around the issue of whether the public convenience and necessity would dictate the granting of this application and hence two competing ferry services. NLFL is attempting to turn this proceeding into "not whether there shall be one or two services available to the public but rather which one of two services shall be available." This position seems to ignore NLFL's public responsibilities in holding a certificate of public convenience and necessity to serve the public. NLFL concedes that a "responsive ferry service between Long Island and Connecticut is required by the public interest "and in such a concession it necessarily implies that such a responsive service does not exist today. Its failure to make its service responsive is bottomed on two factors: the threat of a cross-sound bridge and the threat of Mascony. The question might well be asked: how much protection does NLFL want or is its desire for protection insatiable.[14] Its efforts to be responsive to the admitted public need for service appears to be almost too little, too late. Its efforts would appear to be more to preserve the status quo without adequate consideration for the expansive growth of the public for ferry service. For example, a number of witness testified about the desireability of a reservation system. But it takes little imagination to envision the utter chaos that would exist with NLFL on a busy, hot, summer day at New London where you have two or three ferry loads of cars waiting because they arrived first, and a few cars would bypass them because "they had a reservation." It would take a police force to maintain order. Just several incidents of record where preferential treatment were given automobiles demonstrates the emotional atmosphere that this would create under present capacity.

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[14] Protestant NLFL has been silent on what meaningful assurances it should give the public. This being the case, its "efforts" would appear to be more "puffing" than real because the public still awaits the fulfillment of any genuine committment to meet the public need.

The difficult decision here is whether there is a public need for service that would justify granting this application and whether the granting of the application would result in excess capacity - particularly during the Monday - Friday period in the late fall, winter and early spring. Excess capacity obviously may very well result in increased fares, inferior, service, or both. This record shows that the public is willing to support competition and any consequences that might flow therefrom. Since the user public who uses and needs the services is willing to assume this risk and applicant has confidence that the risks can be overcome, this Commission is in a weakened position to resolve its doubts against the overwhelming public need for improved service.

The pivatol question here revolves around the ability of the applicant to provide the service it seeks. While it may be cruel to the public for protestant NLFL consistly to promise better service "if", as outlined above, it would be an equally cruel hoax on the public for the Commission to grant this application only to find that applicant cannot deliver on its promise for service.[15] Illustrative of the problems is the fact that at New London vehicles must cross the New York-Boston mainline of the Penn Central Railroad. This Commission, in the public interest, must have the assurance that the operations thereover, would adequately protect the public safety because if the Commission were to grant the certificate here sought, such assurances would be implied. It would be a crass disregard of its public responsibilities in the public interest for the Commission to disregard this safety matter. And at Greenport, applicant's proposal would have a great impact on the changing character of this village since there would be loading and unloading of vehicles and thus increasing traffic immensely in the heart of a small village where a narrow two lane road is the main entrance and egress. It was for that reason that the Village Planning Board introduced a study showing that the operation of a ferry, at the site proposed by the applicant, would aggravate a congestion of traffic that now exists, particularly in the summer months, but it would also seriously impair access by ambulances, police cars, fire truck and other emergency equipment. Five other public witnesses, including a former major, businessmen and women, and concerned citizens took much the same position earlier in the hearing.

Section 102 of the National Environmental Policy Act of 1969 (Public Law 91-190), specifically requires that all agencies of the Federal Government shall, to the fullest extent possible,

"(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly effecting the quality of the human environment, a detailed statement by the responsible official on --

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[15] The applicant, for example, promised that the S. S. Greenport would be on public display docked at Greenport, during the hearings in early December, 1973. In this way the public would have had a visual insight in the impact of the ferry in Greenport Harbor, particularly in contrast to the much smaller Shelter Island ferry, which docks just a short distance from applicant's proposed docking facilities. It would have provided a visual comparison with NLFL's facilities.

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

And in Harlem Valley Transportation Association v. George M. Stafford, Civil No. 73-Civ. 1330, S.D.N.Y., June 21, 1973, where the Court emphasized that the agency "should determine at the outset of *** proceedings whether 'major Federal actions significantly affecting the quality of the human environment' are involved within the meaning of 42 U.S.C. §4332(2)(C), and, if so, (2) to require staff preparation of a draft impact statement for circulation to the parties . . ."; and Hanly v. Kleindienst, 471 F. 2d 823 (2nd Cir. 1972) where the Second Circuit Court of Appeals held at p. 836 that:

> "Notwithstanding the absence of statutory or administrative provisions on (threshold determinations), this Court has already held in Hanly I * * * that federal agencies must 'affirmatively develop a reviewable environmental record . . . even for purposes of a threshold (NEPA) determination.' We now go further and hold that before a preliminary or threshold determination of significance is made the responsible agency must give notice to the public of the proposed major federal action and an opportunity to submit relevant facts which might bear upon the agency's threshold decision. * * * The precise procedural steps to be adopted are better left to the agency, which should be in a better position to determine whether solution of the problems with respect to a specific major federal action can better be achieved through a hearing or by informal acceptance of relevant data."

In the light of these circumstances, it is not possible on this record to make an appropriate determination as to whether or not the granting of this application would be a major federal action within the meaning of the National Environmental Policy Act of 1969, and if it were to be so determined, what the environmental impact would be, particularly with regard to the five criteria listed above.

Since the record is not adequate to make the proper determination that the public safety would be protected at New London as well as the barrenness of this record on environmental determinations, particularly at Greenport, this application necessarily must be denied, even though there is an overwhelming public support for additional ferry service. For the Commission must find that applicant "is fit, willing and able properly to perform the service proposed." Section 309(C) of the Interstate Commerce Act. The Administrative Law Judge concludes that such a finding cannot rationally be determined on this record. Clearly, then, the application necessarily must be denied at this time, based on the inadequacies of this record.

FINDINGS AND ORDER

Upon consideration of all evidence of record, the Administrative Law Judge finds that the public convenience and necessity have not been shown to require the proposed operation, that there is no basis to determine whether or not this is a major Federal Administrative proceeding within the meaning of the National Environmental Policy Act of 1969, and that if it were, there is no basis to determine whether the granting of the application would significantly and adversely affect the quality of the human environment within the meaning of the Environmental Policy Act enacted by the Congress.

It is the ORDER of the Administrative Law Judge that the application be denied at this time, and that, in the absence of a stay or postponement thereof or the timely filing of exceptions. The effective date of this order shall be 30 days from the date it is served.

Dated at Washington, D. C., this 10th day of June, 1974.

David H. Allard

By the Commission, David H. Allard, Administrative Law Judge.

ROBERT L. OSWALD

(SEAL) Secretary

No. W-1270

APPENDIX 1

INHERENT WEAKNESSES IN THE PROCEDURES USED IN NLFL'S STUDY: AN ANALYSIS OF COMPETITIVE FERRY SERVICE.

Market Service Area. This area was delineated solely on the basis of time. Consequently, only those potential users who can save time would choose the land/ferry over the overland or highway route. Thus, the study failed to show an evaluation of comparative costs of the land/ferry route and land route. Obviously in this particular situation potential users are going to compare the cost of the land/ferry route, including the ferry changes for vehicles and passengers, with the cost of operating the vehicle for the all-highway route. Additionally, the analysis makes no allowance for delays to the users of the ferry service during the summer peak season.

Trip Time. In computing trip time, an average speed of 50 miles per hour was used, a national average obtained from the American Automobile Association. The use of a national average would not be considered appropriate in the area affected by the ferry service.

Potential Ferry Service. As shown in Exhibits 6.00-6.03, it was estimated 1970 potential average daily automobile traffic (demand) to be 408 spaces. This is estimated to increase to 520 and 663 spaces for 1975 and 1980, respectively. (Exhibit 6.04). The average annual potential automobile traffic, while of some significance, does not show the demand for ferry service during summer peak periods. For example, Exhibit 7.01 shows the average daily demand for ferry service in 1973 was 273 spaces while the peak period was for 520 spaces. Obviously, one of the basic issues is the delay encountered by ferry users during summer peak demand periods (weekends and holidays).

Estimated Average Daily Capacity. As shown in Exhibits 7.00 and 7.02, estimates of an average daily capacity in 1975 will be 1,052 spaces, of which 593 spaces will be provided by the New London Freight Lines, Inc. and 459 spaces by the applicant. This assumes the New London Freight Lines will acquire one new boat with a capacity of 50 spaces providing 4 round trips per day or about 400 spaces per day. Estimated capacity for 1977 and beyond is 1,290 spaces. This estimate assumes the new boat will double scheduled round trips from 4 to 8. The study assumes that the existing operator, as well as the applicant, will provide the same number of round trips throughout the year. This is considered unrealistic, since it is common practice to curtail service during the off-peak and increase service during the peak periods.

Estimated Load Factor. Based on an estimated potential daily demand for 520 spaces and 1,052 available spaces, the study computes utilization will be 49 percent. This estimate is considered unrealistic since it assumes the same number of trips by the applicant and the existing ferry company will be constant throughout the year. Prudent management in this situation could probably curtail the number of trips in the winter months, thus increasing the utilization factor.

APPENDIX 1 CONT'D.

Insofar as Exhibit 106 is concerned, the study procedures are not only considered inadequate, but data should have obtained and analyzed on usage of the ferry by automobile and trucks, since trucks put a constraint on the spaces available for automobiles. Better data should have been developed for auto traffic on a sample basis by off-peak and peak periods, direction of traffic, number of trips fully loaded, etc.

Cross-Examination. The cross-examination of Mr. Conoscenti was principally directed at the procedures used by the witness. The cross-examination made it clear that the 50 miles/hour was an average furnished by the American Automobile Association (AAA) and applied to both automobiles and trucks. Highway miles used to delineate the market area were also provided by the AAA.

At Tr. 2386 the witness stated that he found a "fairly high correlation" between the market area population and ferry traffic. This answer is suspect because Mr. Conoscenti's study does not contain the results of such a study. Mr. Conoscenti's study contains data which indicates that there is not a good correlation between population and ferry traffic. Exhibit 3.00, p. 23, reveals that the population of the market area increased 6.5 percent per year, 1960-1970. Exhibit 7.06, p. 50, shows that auto traffic on the existing ferry route increased by about 2 percent per year, 1964-1970.

The cross-examination developed information indicating that Long Island potatoes move to New England points in the three months September through November as do Long Island grown cauliflower. Thus, potatoes and cauliflowers principally move during the off peak season. In summary, it is difficult, if not impossible, to find any evidence that the witness's study found a "fairly good correlation" between the market and population and ferry traffic.

Impact of Competitive Service. Mr. Conoscenti's Exhibit No. 107 is a one page chart intended to show the impact of competitive ferry service on unit costs. Essentially it shows the effect on the costs of the protestant's service by reducing the load factor from 68.0% in 1973 to 43.0% in 1975. No explanation is provided regarding how unit costs were derived or what unit costs refer to. Generally, average costs would be expected to increase as the load factor (utilization) declines, since many cost items remain the same, e.g., labor, fuel, insurance, etc.

DOCUMENT 190

Interstate Commerce Commission
OFFICE OF PROCEEDINGS
Washington, D.C. 20423

June 21, 1974

Mr. Peter A. Greene
Macleay, Lynch, Bernhard & Gregg
1625 K Street, N. W.
Washington, D.C. 20006

Dear Mr. Greene:

This refers to the joint motion filed by you June 10, 1974, on behalf of New London Freight Lines, Inc., and Bridgeport & Port Jefferson Steamboat Co., protestants in No. W-1270, seeking (a) to strike attachment to applicant's brief, or, in the alternative (b) reopening of the record for the receipt of additional evidence.

On June 19, 1974, the initial decision of Administrative Law Judge David H. Allard, denying the concerned application, was served. In the circumstances, no useful purpose could be served by giving consideration to the motion filed by you on June 10, 1974. Accordingly, no further action will be taken thereon. For your information in the matter I am enclosing herewith a copy of the initial decision of June 10, 1974.

Very truly yours,

Henry U. Snavely
Deputy Director
Section of Operating Rights

Enclosure

DOCUMENT 206

206

FILED

AUG 1 1974

INTERSTATE
COMMERCE COMMISSION

Aug.13,1974

Robert L. Oswald, Secretary
Interstate Commerce Commission
Wash. D.C. 20423

FILE IN DOCKET

Dear Sir:-

I have been informed by Senator James L. Buckley, N.Y., that the application of Mascony Transport and Ferry Service, Inc. of New Bedford, Mass., has been assigned docket W - 1270.

The original denial of this application by Administrative Judge David H. Allard, took place on June 19, 1974.

I take exception to this recommended order of denial, and ask that Mascony and the people of Long Island be granted a further opportunity to present their case, when you bring this matter to the fore again on Aug.19,1974.

Numerous people have made known to me and the Long Island newspapers, and they are oeverwhelmingly in favor of a new ferry line replacing the present monopolistic line, with its decrepit equipment and horrible schedules. Representative Otis G. Pike of Suffolk County, L.I., is also in accord with our views, that Mascony should be granted a license to operate in competition with the McAllister - New London Freight Lines.

Judge Allard's statement that we do not need a second ferry, is wrong. We do need a second ferry, and Mascony, with its superior equipment, should be given an opportunity to prove that it can furnish fast, safe and efficient scheduled service between Long Island and New England.

Give them a chance to prove it, and we will all benefit from it.

Sincerely,

Maurice Harrison

Maurice Harrison
144 Munsell Road
East Patchogue, N.Y. 11772

DOCUMENT 207

ASH, WEINER & ATHAS
ATTORNEYS AT LAW, INC.
15 COURT SQUARE
BOSTON, MASSACHUSETTS 02108

ALCOLM H. FLASH
RANK J. WEINER
OBERT L. ATHAS
ESLEY S. CHUSED

AREA CODE 617
523-6511
742-3530

August 15, 1974

COPY

Interstate Commerce Commission
Washington, D.D. 20423

Re: Mascony Transport and Ferry Service, Inc.
Docket No. W-1270

Gentlemen:

Enclosed find original and 15 copies of applicant's exceptions and petition to reopen the record for receipt of additional evidence.

Kindly acknowledge receipt on the enclosed copy of transmittal and return to the writer in the enclosed stamped self-addressed envelope.

Very truly yours,

Frank J. Weiner

FJW/jd293
Enclosures
cc: All parties

BEFORE THE

INTERSTATE COMMERCE COMMISSION

IN THE MATTER OF

MASCONY TRANSPORT AND FERRY SERVICE, INC.

DOCKET NO. W-1270

****

APPLICANT'S EXCEPTIONS

AND

PETITION TO REOPEN THE RECORD

FOR RECEIPT OF ADDITIONAL EVIDENCE

****

Applicant's Representative:

Frank J. Weiner
Attorney At Law
15 Court Square
Boston, Massachusetts 02108

DUE DATE: August 19, 1974

BEFORE THE
INTERSTATE COMMERCE COMMISSION
IN THE MATTER OF
MASCONY TRANSPORT AND FERRY SERVICE, INC.
DOCKET NO. W-1270

****

APPLICANT'S EXCEPTIONS
AND
PETITION TO REOPEN THE RECORD
FOR RECEIPT OF ADDITIONAL EVIDENCE

****

I

Now comes Mascony Transport and Ferry Service, Inc., hereafter referred to as applicant, and files these exceptions to the initial decision of Administrative Law Judge David H. Allard and petition to reopen the record for receipt of additional evidence.

II

PRELIMINARY STATEMENT

By application filed May 29, 1973, applicant seeks authority to engage in operation, in interstate or foreign commerce, as a common carrier by water, in the transportation of general commodities and passengers, by self-propelled vessels, between the ports of New London, Conn. and Greenport, L.I., N.Y.

Hearings were held at New London, Conn. on October 29, 30, 31 and November 1, 1973; at Greenport, L.I., N.Y., on December 10, 11, 12 and 13, 1973, and January 8, 9 and 10, 1974; and at Washington, D.C. on February 20, 1974.

Briefs were filed on May 23, 1974 by applicant and jointly by protestants New London Freight Lines, Inc. and The Bridgeport & Port Jefferson Steamboat Co., hereafter referred to as NLFL, B&PJS and/or protestants.

Shelter Island & Greenport Ferry Co., Inc., East End Supply Co., Inc., the Connecticut Department of Transportation, and the New York Department of Transportation intervened, but did not file any briefs.

III

In his initial decision served June 19, 1974, the Administrativ Law Judge denied the application for the reasons as stated in the syllabus, "because of operational considerations: safety at New London and environmental at Greenport."

IV

EXCEPTIONS

EXCEPTION NO. 1: The Administrative Law Judge erred in failing to find that public convenience and necessity require the operation as proposed by applicant.

EXCEPTION NO. 2: The Administrative Law Judge erred in his interpretation of Section 102 of the National Environmental Policy Act of 1969 (Public Law 91-190)(NEPA).

EXCEPTION NO. 3: The Administrative Law Judge erred in considering this application to be one of a major federal action significantly affecting the quality of the human environment.

EXCEPTION NO. 4: Even if the instant proceeding is considered as a major federal action significantly affecting the quality of the human environment, the Administrative Law Judge erred in not applying the the five criteria of Section 102(C) of the National Environmental Policy Act of 1969 to the evidence of record.

EXCEPTION NO. 5: The Administrative Law Judge erred in not complying with Rule 1100.250, Special Rules Pertaining To All Proceedings Before The Commission To Insure That Environmental Amenities And Values Are Given Appropriate Consideration.

EXCEPTION NO. 6: The Administrative Law Judge erred in finding that there would be insufficient safety precautions at New London, Conn.

EXCEPTION NO. 7: The Administrative Law Judge erred in finding that there is a barrenness of the record on environmental determinations.

EXCEPTION NO. 8: The Administrative Law Judge erred in denying the application.

The initial decision of the Administrative Law Judge is not only rather unique, but is inconsistent with the subsidiary findings. Throughout the decision, the Administrative Law Judge found, after listening to almost 100 public witnesses, that public convenience and necessity require the proposed service. On Sheet 3 of his initial decision, the Administrative Law Judge states:

> "Almost 100 public witnesses testified in support of the application. They represented almost every conceivable background and occupation. They came from representative points in all of the New England states and particularly the eastern half of Long Island. They used the ferry when their travels were for business as well as pleasure or family requirements, including truckers.
>
> Their complaints of the existing service centered around excessive waiting periods of up to 6 hours, particularly during the summer months; inability to board ferries with automobiles, and sometimes even as foot passengers; inadequacies of convenience facilities; excessive traffic congestion at New London, and Orient Point, Long Island; inabilities of truckers to use existing ferry service because of excessive waiting time which would cause excessive hours of service by drivers; and the inconvenience of sleeping in the truck or car at docks in order to insure space on vessel."

Thus, the Administrative Law Judge fully realized that the existing service of NLFL (the prime protestant) is inadequate to service the general public.

At Sheet 10 of his decision, the Administrative Law Judge, in his "Discussion and Conclusions" states:

> "The record here is clear and unequivocal that the existing ferry service leaves a great deal to be desired. Even protestant NLFL concedes this point. The long waits that the public endures to use the existing service, particularly during the summer and holiday week ends, contributed greatly to the emotional overtones extant to the uncontradicted testimony of a vast preponderance of the public witnesses...

For clearly the services here sought by the public for ferry service between New London and the eastern end of Long Island - be it Orient Point or Greenport - exceed the capacity of existing services for a good part of the year.

So the ultimate question revolves around the issue of whether the public convenience and necessity would dictate the granting of this application and hence two competing ferry services. NLFL is attempting to turn this proceeding into 'not whether there shall be one or two services available to the public but rather which one of two services shall be available'. This position seems to ignore NLFL's public responsibilities in holding a certificate of public convenience and necessity to serve the public. NLFL concedes that a 'responsive ferry service between Long Island and Connecticut is required by the public interest' and in such a concession it necessarily implies that such a responsive service does not exist today... Its efforts to be responsive to the admitted public need for service appears to be almost too little, too late. Its efforts would appear to be more to preserve the status quo without adequate consideration for the expansive growth of the public for ferry service."

...

The difficult decision here is whether there is a public need for service that would justify granting this application and whether the granting of the application would result in excess capacity - particularly during the Monday - Friday period in the late fall, winter and early spring. Excess capacity obviously may very well result in increased fares, inferior service or both. This record shows that the public is willing to support competition and any consequences that might flow therefrom. Since the user public who uses and needs the services is willing to assume this risk and applicant has confidence that the risks can be overcome, this Commission is in a weakened position to resolve its doubts against the overwhelming public need for improved service.

"The pivatal [sic] question here revolves around the ability of the applicant to provide the service it seeks. While it may be cruel to the public for protestant NLFL consistently to promise better service 'if', as outlined above, it would be an equally cruel hoax on the public for the Commission to grant this application only to find that applicant cannot deliver on its promise for service."

There is no foundation in this record to support the Administrative Law Judge's remarks concerning applicant's inability to "deliver". In footnote 15, the Administrative Law Judge cites, as an example, applicant's promise that the S.S. Greenport would be on public display at Greenport, L.I. during the hearings in early December 1973 in order that the public would have a visual insight of the ferry in Greenport Harbor. The Administrative Law Judge completely overlooked the transcript and the evidence of applicant's President, George Power pertaining to the inability of applicant to have the vessel S.S. Greenport at Greenport Harbor, L.I. in either December 1973 or January 1974. (R 2478-[illegible]79). Applicant could not move the vessel S.S. Greenport from its present port at New Bedford, Mass. to Greenport Harbor because the original bill of sale of the vessel, from the Delaware River & Bay Authority to applicant, was not properly endorsed, and there had been no resolution of the directors of the Delaware River & Bay Authority that had to be forwarded to the appropriate Federal agency which would allow applicant to secure the proper documentation to sail the vessel from New Bedford, Mass. to Greenport Harbor. Applicant received the appropriate documentation on January 17, 1974, such date being long after the hearings held at Greenport, Long Island. (R 2479).

On cross examination by NLFL, witness Power presented to NLFL's attorney, the consolidated certificate issued by the United States Coast Guard, dated January 17, 1974 and endorsed on February 1, 1974, said document being the appropriate document required in order to move the vessel from New Bedford, Mass. to Greenport, Long Island. (R 2517-2521) Applicant thus submits that the Administrative Law Judge was extremely harsh in seizing upon applicant's inability to have the S.S. Greenport at Greenport Harbor, New York as illustrative of its inability to provide the proposed service. Stated differently, the Administrative Law Judge and NLFL would have had applicant sail the vessel from New Bedford, Mass. to Greenport, L.I. in violation of federal regulations. The Commission is well aware of certain time lags in administrative processes and applicant should not be criticized for its desire to adhere to U.S. Coast Guard and other federal regulations.

The Administrative Law Judge further failed to consider the evidence presented by the City Manager, City of New London, Connecticut concerning the city's actions pertaining to railroad crossings within the City of New London, Connecticut. Applicant, in its brief, and which applicant requests it be incorporated herein by reference, summarized the evidence presented by the City Manager, City of New London, Conn. Apparently, U.S. Department of Transportation regulations call for the ultimate elimination of all railroad crossings. Under the Highway Safety Act, the Federal Highway Administrator has no discretion in exempting any area from the provisions of ultimate elimination of railroad grade crossings. When the City of New London, Conn. first became aware of these provisions and the implications that it had in its relation to the City of New London, Conn., the city became upset and enraged over the economic effect it would have upon the City of New London, Conn. if all the railroad grade crossings were eliminated. As stated by the City Manager, City of New London, Conn., plans for implementation of the elimination of these grade crossings and its effect on the City of New London, Conn. would virtually wipe out all of the value of the real estate south of State Street, New London, Conn. (R 258-260) Accordingly, an appropriate resolution was adopted by the City of New London, Conn. Appeals were made to the Connecticut Department of Transportation, to the Governor of the State of Connecticut and to the United States Department of Transportation through Connecticut's legislative representatives in Washington, D.C. A meeting was held in the office of Connecticut's Senator Abraham Ribicoff in October 1973 with Senator Ribicoff, Senator Weicher, and Representative Steele who represent Connecticut's interests in the Senate & House of Representatives. The Federal Highway Administrator was also present and was sympathetic to the problems facing the City of New London, Conn. The city's position was that it could not eliminate grade railroad crossings, but rather, it be allowed to put in fail-safe mechanisms which would preclude pedestrian or vehicular traffic across the tracks when a train was approaching or at the crossings. (R 260-261)

The Federal Highway Administrator, in reiterating that he was sympathetic to the predicament of the City of New London, Conn. informed the parties that he, as Federal Highway Administrator, had no discretion under the Federal Highway Safety Act. The Federal Highway Administrator further stated that he desired discretionary powers because the uniform application of the Highway Safety Act did not make much sense in certain kinds of situations and New London, Conn. was one of them. (R 261) The City Manager of New London, Conn. further testified that because of the topography and because of the track alignments, the Federal Highway Administrator and Connecticut's legislative representatives stood ready to support legislation to give discretionary powers to the Federal Highway Administrator. The Federal Highway Administrator stated that if he received the discretionary powers desired, he would exempt New London, Conn. from the requirements of elimination of all grade crossings, and allow the installation of fail-safe mechanisms. (R 261-263) An agreement was reached whereby a bill would be sponsored in Congress and the City of New London, Conn. had the assurance from the Federal Highway Administrator and Federal Highway Administration of their support of an amendment which would in effect, give the Federal Highway Administrator discretionary powers.

The Commission is respectfully requested to take official notice of S.2869 which was introduced by Senator Abraham Ribicoff of Connecticut in January 1974. This particular bill was passed by the Public Works Committee during the week of August 5, 1974 and is scheduled to pass during the week of August 19, 1974. While originally assigned S.2869, the bill has been absorbed as part of an Omnibus Bill, The Highway Act Amendments of 1974, which is unnumbered as of the date of this pleading. The Omnibus Bill gives the Federal Highway Administrator broad discretionary powers. As a matter of fact, it was drafted by the U.S. Department of Transportation for Senator Ribicoff's office prior to his filing of the bill. The U.S. Department of Transportation and the Federal Highway Administrator have already stated that the intent to exercise its discretion under the bill will be applicable only to the City of New London, Conn. and that the Federal Highway Administrator is not applying that discretionary power to any other area in the United States.

According to information received from Senator Ribicoff's office, no opposition to the bill exists and it is expected to pass during the week of August 19, 1974. In essence, because of the track alignment in and through the City of New London, Connecticut, the discretionary power was mandatory. The waterfront of the City of New London, Conn. represents that city's greatest resource and consequently, it was forced to seek legislative relief.

The City of New London, Connecticut is in favor of applicant' proposal as it would make a positive contribution to the redevelopment of the Shaw Cove area of New London, Conn. (R 268)

The Development Coordinator of the City of New London, Conn. corroborated the City Manager's testimony and further agreed, that the property and the area in which applicant proposes to establish its terminal and docking facilities is part of the Shaw Cove Urban Renewal project of the City of New London, Conn. which had been undertaken by the city and a contract had been signed with the Federal Government to begin execution of the contract. The Director of the Development Coordinator of the City of New London, Conn. present at the meeting in Senator Ribicoff's office in October 1973 further stated that New London, Conn. was forced to seek legislative relief because it consists of an area of 6.2 square miles with its greatest resource being its waterfront area. (R 701-710) This witness further testified that at the very worst, there would be a fencing of the right of way at the property involved with installation of flashing light and arm system hooked into the circuity of the track near the property proposed to be utilized by applicant for its facilities. (R 701-710).

There was also evidence the Board of Commissioners of New London, Conn. voted favorably on the proposed ferry operations as it would have a favorable economic impact on the City and the service proposed by applicant was badly needed. (R 716-727) (Exhibit 35)

It becomes further apparent, that the Administrative Law Judge failed to take into consideration all attempts being taken by applicant and the City of New London, Conn. with respect to safety at the grade crossing in and/or near the area sought to be used by applicant for its terminal and docking facilities. The area itself is part of an Urban Renewal project. The redevelopment of the particular area known as the Shaw Cove area must go forward in order to rejuvenate and revitalize the waterfront area involved. The City of New London, Conn. through its legislative representatives in Congress has been successful in securing legislation which would allow the city to continue to utilize its waterfront property, its largest single asset,and enable it to continue to go forward with the Urban Renewal project of the Shaw Cove area.

In failing to consider the steps taken by the City of New London, Conn. and its Congressional representatives, to insure safety precautions at New London, Conn., the Administrative Law Judge has stamped a final disapproval of the safety precautions proposed to be taken by the City of New London, Conn.

While conceding that public convenience and necessity require the issuance of the certificate to applicant, the Administrative Law Judge took a rather strange view with respect to applicant's proposal and its impact on Greenport, Long Island. At Sheet 11, the Administrative Law Judge states that applicant's proposal would have a great impact on the changing character of the Village of Greenport, and the Administrative Law Judge refers to a "study" submitted by the Village Planning Board alleging that the site proposed by applicant would aggrevate a congestion of traffic that exists particularly in the summer months together with other customary allegations of opposition that are associated with any proposal of the type offered by applicant.

The Administrative Law Judge evidently gave considerable weight to Exhibit 100 and to which applicant moved to strike certain portions because of pure hearsay. The "study" referred to by the Administrative Law Judge is obviously that entitled Sub-Exhibit 3 to that document known as Exhibit 100 and is a letter from the Suffolk County Traffic Safety Department to the Village Planning Board, Village of Greenport, Greenport, New York. Applicant, at transcript page 2272, moved to strike paragraph 4 on page 2 of Exhibit 100 and Sub-Exhibit 3 because it was hearsay evidence. (R 2272) Even the attorney for the Village Planning Board, Village of Greenport, agreed that this particular document constituted hearsay. (R 2272) Applicant's motions to strike various portions of Exhibit 100 as reflected in the transcript at pages 2272-2275 were denied. As such, applicant submits that the Administrative Law Judge erred in allowing Exhibit 100 to be received into evidence and considering the matter referred to therein.

Applicant was deprived of an opportunity to cross-examine the author of Sub-Exhibit 3 to Exhibit 100. The Commission is directed to that Sub-Exhibit 3 to Exhibit 100 where even the author of the letter stated, "In the limited time available for the study before the January 8, 1974 public hearing, it is impossible to conduct a comprehensive traffic investigation into this matter". On the basis of this letter, the Administrative

Law Judge concluded that there would be a severe traffic impact upon the Village of Greenport.

The Administrative Law Judge erred by acting as an arbiter in the conflict between the Village Trustees and the Village Planning Board. The witness for the Village Planning Board agreed that the Village Trustees overide the action taken by the Village Planning Board (R 2279). However, the Administrative Law Judge failed to consider the resolution of the Board of Trustees of the Incorporated Village of Greenport. (Exhibit 90) Exhibit 90 specifically states that the Board of Trustees of the Greenport, Long Island support the proposal of applicant; that the Trustees of the Village of Greenport had been presented with applicant's plan pertaining to a ferry service between the Village of Greenport, Long Island, New York and the City of New London, Conn.; that the Village Trustees had long recongized the need for efficient passenger and vehicular ferry transport services between such terminal points; that the Board of Trustees found that the services proposed to be afforded would be of great benefit to the Incorporat Village of Greenport, its environs and their residents; that such services would result in better communication between the terminal point areas, to the improvement of trade and general betterment of all activities in and between such areas; and that the Village Trustees resolved to support and assist the inauguration of the ferry service between Greenport, Long Island, N.Y. and the City of New London, Conn., further expressing its wish that such services commence as of the earliest date possible conditioned upon applicant acquiring title to certain real estate property. (Exhibit 90)

On the strength of that resolution of the Village Trustees which supercedes any action taken by the Village Planning Board, applicant acquired substantial real estate in the Village of Greenport, Long Island, New York in order to inaugurate and institute its proposal.

The conflict between the Village Planning Board and the Village Trustees becomes further apparent as a result of the intervention of East End Supply Company which operates a retail store adjacent to the property that applicant proposes to use as its facility at Greenport, Long Island, New York. The Administrative Law Judge failed to pierce the relationship between the Village Planning Board and East End Supply Company, Inc. As admitted by the witness for Planning Board, one of the members of that Planning Board, a certain Mr. Mills is the brother-in-law to the owner of East End Supply Company. Local Village politics have entered into applicant's proposal and this was readily ascertained when intervenor East End Supply Company opposed the application because of fear of congestion and the owner of East End Supply Co. has a brother-in-law who is a member of the Village Planning Board which contradicts the Village Trustees, the latter having superior powers to the Village Planning Board and in a position to overide any position taken by the Village Planning Board.

It is difficult to fathom the reasoning of the Administrative Law Judge in his application of Section 102 of NEPA (Public

Law 91-190). Section 102(c) of NEPA requires all agencies of the Federal Government, to the fullest extent possible "to include in every recommendation or report on proposals for legislation and other major Federal actions significantly effecting the quality of the human environment, a detailed statement by the responsible official on -

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long term productivity, and,

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

The five criteria listed above are also contained in the Commission's Rules of Practice and more specifically Rule 1100.250(b)(2)(i)(ii)(iii)(iv) and (v).

Applicant in filing its application alleged that there would not be any adverse impact on the quality of the human environment. In view of Rule 1100.250, and especially in view of the recent decision of the United States Court of Appeals for the Second Circuit (Docket No. 73-2596), Harlem Valley Transportation Association and Natural Resources Defense Council, et al -v- George M. Stafford, et al, (June 18, 1974) the Administrative Law Judge erred greatly in his initial decision.

At no time whatsoever during the course of the proceeding were any environmental issues raised to the extent that anyone would be aware that the subject proceeding was one of a major Federal action. Thoughout this proceeding, applicant presented evidence to the effect that there would not be any adverse impact upon the quality of the human environment. It is difficult to conceive how the Administrative Law Judge could find that the record was barren and that it was not possible on this record, to make an appropriate determination as to whether or not the granting of this application would be a major Federal action within the meaning of NEPA.

After all, it is the Commission which must determine that the application is one of a major Federal action, and if it did, a draft impact statement should have been prepared before the hearing stage of the case. Greene County Planning Board -v- FPC, 455 F.2d(2d Cir.)., cert. denied, 409 U.S. 849.

The Administrative Law Judge issued his decision , contrary to the opinion of the United States Court of Appeals for the Second Circuit (Docket No. 73-2496), Harlem Valley Transportation Association and Natural Defense Council, Inc. et al -v- George M. Stafford et al. On the basis of this court opinion, the Interstate Commerce Commission and/or the Administrative Law Judge did not utilize the proper procedures under NEPA in the handling of the instant application. The steps taken by the Administrative Law Judge did not meet the burden imposed by the affirmative duty in NEPA. If the instant proceeding was considered at the intial outset to be one of a major Federal action, a "threshold determination" should have been presented to all parties so that each would be aware that the proceeding was one requiring *major* Federal action which would significantly effect the human environment within the meaning of 42 U.S.C. 4332(2)(c).

If in fact the instant application is one of a "*major* Federal action", the Commission should have determined such at the outset and required staff preparation of a draft impact statement for circulation to all parties. The Administrative Law Judge apparently seized on the absence of the "threshold" determination at Sheet 12 of his report where he cites from the District Court decision in *Harlem Valley Transportation Association -v- George M. Stafford*, Civil No. 73-Civ. 1330 S.D.N.Y., June 21, 1973.

Now, after 12 days of hearing, after more than 100 witnesses have testified, and after briefs have been filed, the Administrative Law Judge apparently feels that it is not possible to make an appropriate determination as to whether the subject proceeding is one requiring *major* Federal action, and denies the application because of the court's opinion in *Harlem Valley Transportation Association* supra, because no preliminary or "threshold" determination of significance was made by the Commission.

Applicant submits that if there was to be a preliminary or "threshold" determination as to the significance of the action to be taken by the Administrative Law Judge and/or the Commission in this proceeding, the Interstate Commerce Commission and the Administrative Law Judge should have given notice to the public of a proposed *major* Federal action with an opportunity to the public to submit relevent facts which might bear upon the agency's "threshold" decision. Not only was this cited by the court in Harlem Valley Transportation Association supra, but Rule 1100.250(d) and (e) require compliance through the serving of papers in accordance with this rule, upon various parties.

Thus, procedurely, applicant was prejudiced in this application. The Administrative Law Judge did not make a preliminary or "threshold" determination if the granting or denying of the application would be a major Federal action within the meaning of NEPA particular in regard to the five criteria of Section 102(C) of NEPA. It is interesting to note, that none of the protestants nor any of the intervenors alleged any substantial environmental impact. Had any such allegations been made, then such protestants and/or intervenors would have been subject to Rule 1100.250(3) which requires these protestants and/or intervenors to file 10 copies of their submission with the Counsil on Environmental Quality at the time they file with the Commission and also supply a copy of such submission to all participants to the proceeding.

It is submitted that there was sufficient evidence in this record to show that the action is not one of a major Federal action significantly effecting the quality of the human environment. Even if it were, the application of the five criteria to the evidence presented in this proceeding would also show that there would not be any adverse impact upon the quality of the human environment.

The Administrative Law Judge failed to consider Exhibit 36 which reflects water quality certification by the Connecticut

Department of Environmental protection. The Administrative Law Judge put himself in the position of the Environmental Protection Agency to determine that there would be an environmental impact upon the Village of Greenport, Long Island, New York. There is nothing in the decision of the Administrative Law Judge to indicate that any appropriate regional, state, or local governmental body was requested to supply its comments as required under Rule 1100.250(e)(2) if the proceeding was one requiring a major Federal action.

Throughout these proceedings, applicant stated that it had taken all steps to comply with various environmental statutes. Nothing in the record appears to contradict the testimony of applicant's chief witness. Attached hereto as Appendix "A", is a copy of the decision of the State of New York Department of Environmental Conservation, Tidal Wetlands Application No. TW-15277-0053 decided July 3, 1974. This pertains to applicant's request to install the appropriate docking facilities at Greenport, Long Island, New York. It is to be noted that the opponents at the New York Environmental proceeding were the same as those in the instant application and that the objections of the opponents were various and sundry and wholly inconsistent with their objections at the hearing before the Administrative Law Judge. In other words, the opponents were doing everything in their power to prevent applicant's proposal from becoming a reality.

In his "Conclusions and Recommendations", the hearing officer of the New York Department of Environmental Conservation found, at page 4 of his report (Appendix "A") that the criteria upon which a decision is made under the environmental statute of New York are, that the basis for the issuance of a permit shall be a determination that the proposal is in the public interest in that: (1) the proposal is reasonable and necessary; (2) the proposal will not endanger the health, safety, and welfare of the people of the State of New York; and (3) the proposal will not cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the State, including soil, forests, water, fish and aquatic land related environment.

The "Conclusions and Recommendations" further show, at page 5 (Appendix "A") that the applicant's proposed project is reasonable and necessary, will not endanger the health, safety, and welfare of the people of the State of New York, and will not cause unreasonable, uncontrolled, or unnecessary damage to the natural resources of the State, including, soil, forests, water, fish and aquatic and land related environment. Pursuant to the decision of the hearing officer of the New York Department of Environmental Conservation, applicant was issued the appropriate permit, a copy of which is attached hereto as Appendix "B".

The reaction by the general public and local officials of the City of New London, Conn. and the Village Trustees of the Village of Greenport was such that each community has held various meetings concerning their respective positions.

The City of New London, Conn. was deeply concerned with the denial of the application by the Administrative Law Judge.

As a result the City of New London and applicant have been meeting with respect to alternative sites for the inauguration of the ferry service between New London, Conn. and Greenport, Long Island. Attached hereto as Appendix "C", is correspondence addressed to the Interstate Commerce Commission by the City Manager, City of New London, Conn. The City of New London, Conn. and applicant, in a joint effort to institute service between New London, Conn. and Greenport, Long Island have agreed to the execution of a lease between the City of New London, Conn. and applicant whereby applicant would utilize the present City Pier as reflected in the copy of the lease between the City of New London and applicant submitted hereto as Appendix "D". If necessary, and if the Commission finds that the steps to be taken by applicant and New London with respect to applicant's New London properties are inadequate, whereby there is a question of safety at the grade crossing, and for which the City of New London, Conn. has been exempted under the Omnibus Bill referred to above, applicant will continue to operate from the City Pier. As a matter of fact, the City Pier is presently used by the Fisher Island Ferry and no safety problem exists. Prior to the use of the Municipal Pier at New London, Conn., by the Fisher Island Ferry, the same pier was used by the Block Island Ferry. Therefore, applicant submits that there are at present, adequate facilities available to applicant to institute a service at New London, Conn. without any controversy taking place. The City of New London, Conn. which wants and needs the proposed service, is continuing to do everything within its power to have such service become a reality at New London, Conn. by allowing applicant to use the Municipal Pier which is wholly owned by the City of New London, Conn.

Applicant further submits that while the Administrative Law Judge failed to make any determination as to whether or not the granting of the application would be a major federal action within the meaning of NEPA, the facts of record show that the application, if granted, would have a beneficial environmental impact upon the nation.

As stated in its brief, the instant proceeding was conducted during the period when the Commission was considering Ex Parte No. 55 (Sub No. 8) Motor Common Carriers of Property, Routes and Service, (Petition for the Elimination of Gateways by Rulemaking), 119 M.C.C. 530. Applicant's proposal would be a step in the conservation of fuel, and as stated in its brief, applicant projected a savings of 6 million gallons of gasoline a year. A further beneficial effect upon the nation's environment would be that the grant of authority would be fully consistent with the anti-polution programs established by the Environmental Protection Agency and the Federal Energy Office. Ex Parte No. 55 (Sub No. 8) reveals that these agencies are deeply concerned with highway movements. Applicant's proposal will eliminate numerous motor vehicles operating on the Connecticut Thruway, the Throgs Neck Bridge in New York City, and the Long Island Expressway. The proposal will result in the reduction of one-way highway mileage driving of 200 miles. Approximately 400 road miles or more, on a round-trip basis, would be eliminated. The result would be in accord with the position of the Environmental Protection Agency and the Federal Energy Office whereby automobile and commercial vehicle tires will not wear out as quickly, thereby saving rubber and less asbestos from brake linings would be left on the highway. The Commission adopted the concern and view of the Environmental Protection Agency that asbestos, which is washed off the highways by rain into nearby streams adds to the pollution of waterways.

Approval of the application would also go a long way in eliminating the highway congestion and traffic that has penetrated and continues to penetrate into the New York City and the Long Island Expressway areaa. Certain traffic would be diverted from this already congested area (which is perhaps the highest in the nation), to the east end of Long Island through applicant's proposal.

It is difficult to conceive of any adverse environmental effect which cannot be avoided should the proposal be implemented.

There appears to be no alternative to the granting of the application itself. The denial of the application merely puts matters in a status quo. The public continues to suffer. The Connecticut Thruway, Throgs Neck Bridge and the Long Island Expressway continue to become more and more congested each day and more and is more fuel consummed each day.

Approval of the application would also enhance and conform to the ultimate goals of the City of New London, Conn. which is involved in an urban renewal project in agreement with the Federal government. The Shaw Cove area in New London, Conn. is being revitalized. The ferry service in the area has been considered as part and parcel of the redevelopment program. Employment would be provided, and on a long term basis, the City of New London, Conn. will benefit as will Greenport, Long Island.

There are no irreversible and irretrievable commitments of resources which would be involved in the proposed action of granting the application should such grant of authority become a reality.

While officials of the City of New London, Conn. and the Village Trustees of Greenport, Long Island were shocked at the initial decision, the public was equally shocked.

Attached hereto as Appendix "E" is an editorial appearing in Suffolk Life during the week of July 7, 1974.

Attached hereto as Appendix "F" is an additional editorial appearing in Suffolk Life during the week of July 21, 1974. It is interesting to note that the McAllisters, (owners and operators of NLFL) are now seeking financial assistance from the State of New York in order to purchase a new vessel. It becomes further apparent that NLFL's evidence of securing a new vessel and request for government insured financing pursuant to the provisions of Title XI of the Merchant Marine Act of 1936 was nothing but further "puffing" in accord with the Administrative Law Judge's finding in footnote 14 of Sheet 10 of his initial decision. While NLFL stated that it has negotiated a contract for the construction of a new vessel, the simple fact remains that the contract has not been executed nor was it approved by the Board of Directors of NLFL. Now, with the denial of the application through the initial decision, NLFL is seeking financial assistance from the State of New York to purchase a new vessel.

Attached hereto is Appendix "G" is an open letter appearing in Suffolk Life during the week of July 21, 1974 and written by members of the public to their two Senators from the State of New York and a Representative of the Interstate Commerce Commission.

V

PETITION TO REOPEN THE RECORD FOR RECEIPT OF ADDITIONAL EVIDENCE

The Commission is respectfully requested to open this proceeding for the receipt of additional evidence, such evidence representing those documents attached hereto as Appendices "A", "B", "C", and "D". Such documents were not available at the time of the hearing and apparently satisfy any objections or reservations that the Administrative Law Judge may have had with respect to the safety precautions and environmental impact on New London, Conn. and Greenport, Long Island.

It is further submitted that Appendices "A", "B", "C", and "D" are non-controversial and speak for themselves. The reopening of this proceeding for the receipt of Appendices "A", "B", "C" and "D" into evidence is not without precedence in this proceeding. By Order dated March 20, 1974 and served March 26, 1974, the Administrative Law Judge reopened the proceeding for the purpose of receiving in evidence, a letter from the Village of Greenport Planning Board and that such letter was marked and received in evidence as Exhibit 116. Accordingly, applicant submits that the same treatment is warranted with respect to Appendices "A", "B", "C" and "D", as they pertain to material facts to justify a grant of the application. It is further believed that the Administrative Law Judge, when he stated on Sheet 13 of his decision that the application necessarily must be denied at this time would have stated differently if Appendices "A", "B", "C" and "D" were available during the hearings as such eliminate any alleged inadequacies if in fact such inadequacies exist.

VI

Wherefore, applicant respectfully prays that the Commission review the entire record in this proceeding and find that public convenience and necessity require the granting of the authority sought by applicant; that existing service is inadequate; that the needs of the general public are paramount and must not be ignored; that a grant of authority will eliminate the perpetuation of a monopoly that has virtually gouged the public for 18 years; that a grant of the application will have a beneficial effect upon the public; and that applicant has sustained its burden of proof.

Respectfully submitted,

DATED AT:

15 Court Square
Boston, Massachusetts 02108

Frank J. Weiner
Attorney for Applicant

August 15, 1974

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of August 1974, served a copy of the foregoing document upon all parties of record in this proceeding, by mailing, by first class mail, postage prepaid, a copy thereof, properly addressed to each.

Frank J. Weiner

APPENDIX "A"

State of New York

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Tidal Wetlands Application No. TW-15277-0053

In the Matter of the Application

- of -

MASCONY TRANSPORT & FERRY SERVICE, INC.

to install pile dolphins in a ferry
slip in Greenport Harbor, Suffolk
County, New York.

DECISION

Application filed	May 23, 1973
Hearing held in Town of Greenport	December 4, 1973
Decision	July 3, 1974

State of New York

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Tidal Wetlands Application No. TW-15277-0053

In the Matter of the Application

- of -

MASCONY TRANSPORT & FERRY SERVICE, INC.

Report by

Donald F. Carson
Hearing Officer

I, Donald F. Carson, hereby submit this hearing officer's report including recommended Findings and Determinations.

Dated: Albany, New York
July 3, 1974

Donald F. Carson
Hearing Officer

REPORT ON TIDAL WETLANDS APPLICATION NO. TW-15277-0053

PROCEEDINGS

On May 23, 1973, George R. Power, President of Mascony Transport & Ferry Service, Inc. (the "Applicant"), acting in the name and on behalf of that company, made application to the Department of Environmental Conservation (the "Department") under Section 15-0503 of Article 15 of the Environmental Conservation Law (the Stream Protection Act) and Public Law 92-500, Section 401(a)(1) (the Federal Water Pollution Control Act Amendments of 1972 or the FWPCA) and Part 608 of the Official Compilation of Codes, Rules and Regulations for the State of New York for administering said laws, to install a series of wooden pile dolphins in a ferry slip in Greenport Harbor, Town of Southold, Suffolk County, New York, and requested that the Department certify that there are no applicable effluent limitations or other limitations or standards under Sections 301, 302, 306 or 307 of the FWPCA.

Notice of Application was published in the Suffolk Weekly Times on June 21 and 28, 1973. Proof of publication has been filed for this notice.

Subsequent to the publication of the aforementioned Notice of Application, the Applicant was informed by the Department that this project was also subject to provisions of the Tidal Wetlands Act (Article 25 of the Environmental Conservation Law). A notice of public hearing for a moratorium permit for the disturbance of tidal wetlands pursuant to the provisions of Section 25-0202 of the Environmental Conservation Law was then published in Newsday on November 23, 1973, and in the Suffolk Weekly Times on November 15 and 22, 1973. Proof of publication has been received for all published notices.

A public hearing was held in the Department's Region 1 Office, Stony Brook, Long Island, on December 4, 1973, at 10:00 o'clock in the forenoon before Donald F. Carson, Hearing Officer. At this hearing, the Department reviewed the applications, maps and plans submitted, examined a witness, and heard arguments in favor of the project, all as shown by the stenographic record of the proceedings.

The Applicant was represented at the hearing by George R. Power, President.

Notices of appearance as parties-in-interest to this project were filed by Mr. Irving L. Price, Jr., Esq., on behalf of the East End Supply Company, Inc.; by J. Brent Lynch, on behalf of McAllister Brothers, Inc., and New London Freight Lines, Inc.; and by Frank Beckwith, Manager of the Shelter Island Ferry Company.

The East End Supply Company, Inc., was represented at the hearing by Mr. Irving L. Price, Jr., Esq., its attorney. McAllister Brothers, Inc., and New London Freight Lines, Inc., were represented at the hearing by Mr. Gerard M. McAllister, President of McAllister Brothers, Inc., and Vice-President of that company's wholly owned subsidiary New London Freight Lines, Inc.

At the hearing, a discussion was held on the record regarding whether the Applicant's request for a Stream Protection Permit was to be considered and all parties agreed that both Tidal Wetlands and Stream Protection Permits were at issue. At the conclusion of the hearing on December 4, 1973, the hearing officer granted the objectors and parties-in-interest a two week period in which to file a request for a reopening of the hearing after receipt of copies of two of the

Applicant's exhibits. These exhibits were filed with the Department on February 19, 1974, and on March 4, 1974, the Applicant filed a new and revised exhibit which slightly modified the proposed project.

SUMMARY DESCRIPTION OF THE PROJECT

The Applicant proposes to install a number of dolphins or clusters of piles between two existing docks in the harbor in the Village of Greenport, Suffolk County, to create a receiving or docking slip for a proposed ferry service between the Village of Greenport and New London, Connecticut. The outer portion of the existing dock east of the proposed facility would be removed to make room for the ferry vessel to enter and leave the docking slip.

SUMMARY OF OBJECTIONS AND NOTICES OF APPEARANCE

The East End Supply Company is opposed to the subject project on the grounds that the proposal does not include the proper and safe construction of all work connected with the project and that execution of the project would adversely affect the health, safety and welfare of the people of the State of New York.

McAllister Brothers, Inc., and New London Freight Lines, Inc., contend that the proposed ferry service would create the potential for an influx of some 12,000 passengers and 1,200 automobiles daily in the Village of Greenport; that three of the four vessels the Applicant intends to use for this ferry service are not equipped with sewage treatment or holding tanks, therefore, raw sewage would be discharged into Greenport Harbor daily; that the ferry service would interfere with small boats and sailing vessels in Greenport Harbor; that the massive dolphins, piers and slips required to handle the Applicant's vessels are inconsiste with the character and atmosphere of Greenport Harbor and Village; that there are no emission control devices, smoke indicators or alarms installed on the vessels to be used by the Applicant which burn Bunker C heavy fuel oil in high quantities and, therefore, there is a serious potential for air pollution; the vessels proposed to be used by the Applicant are not equipped with oil content meters nor holding tanks and oil bilge water as required by the Water Quality Improvement Act of 1970 and there are no safety devices to prevent fuel oil overflow during fueling, therefore, creating the possibility of oily overboard discharges in Greenport Harbor; and the vessels of necessity carry thousands of barrels of fuel oil in bottom tanks and the danger exists of damage or holing of the vessel which could destroy Greenport Harbor and surrounding beaches.

Neither the objectors nor the parties-in-interest presented testimony at the hearing.

FINDINGS

1. The Applicant has its corporate offices for the transaction of business in New Bedford, Massachusetts.

2. The Applicant owns a vessel called the S. S. New Jersey that is 350 feet in length, 59 feet in width and draws 10 feet, 5 inches when loaded which it proposes to utilize for ferry service between New London, Connecticut and Greenport Harbor.

3. The S. S. New Jersey has a capacity of 1200 people and some 110 cars but currently is certified to carry some 800 passengers and 110 vehicles. The ferry was originally operated in Chesapeake Bay, is radar equipped and can be safely operated during bad weather.

4. The Applicant would operate as many as four round trips per day and proposes to furnish the ferry service as often as the public demands. The Applicant would acquire as many as three additional vessels of capacity similar to the S. S. New Jersey should traffic warrant such expansion.

5. The Applicant in operating the proposed ferry service states that it will comply with all applicable Federal, State and local laws with respect to navigation and water and air pollution control.

6. By letter of February 26, 1974, the Applicant submitted a copy of a new lease entered into between the owners of the existing docks and the Applicant. These docks are located south of Front Street and east of Third Street in the vicinity of Greenport. The Applicant slightly revised its docking plan by moving the proposed construction 50 feet to the east so as to avoid possible interference with the Shelter Island Ferry that operates out of Greenport Harbor to the west of this proposed project.

7. The Applicant proposes to construct some 14 dolphin structures between the two docks in the harbor at Greenport to create a docking slip for the proposed ferry service. The dolphins will be designed to withstand the force of a ferry striking them.

8. The dolphin structures will be constructed by driving wooden piles using equipment situated on an adjacent dock. The pile clusters will be tied together using heavy wire cable or timbers.

9. The water adjacent to the docks and dolphins is a minimum of 11.5 feet deep at mean low tide. Consequently, no marshes or marsh grasses as defined in the Tidal Wetlands Act will be affected by this project. Dredging will not be required to provide additional depth for operation of the ferry service.

10. The Applicant has discussed with village officials potential traffic problems that may result from the inauguration of the proposed ferry service. Village officials are considering changes in on-street parking in the area of the proposed docking facility to provide easy ingress and egress for vehicles being loaded and unloaded from the ferry.

11. The Board of Trustees of the Village of Greenport at a meeting on June 18, 1973, resolved to assist and support the inauguration of a ferry service by the Applicant between the Incorporated Village of Greenport and the City of New London, Connecticut.

12. The Applicant has various off-street parking facilities for some 700 vehicles with ingress and egress to Front Street and Third Street all within several hundred yards of the proposed docking facility.

CONCLUSIONS AND RECOMMENDATIONS

1. The standards upon which a determination shall be made by the Department for a moratorium permit to permit the alteration of tidal wetlands under the Tidal Wetlands Act are contained in Article 25 of the Environmental Conservation Law and in Part 660 of the proposed Rules and Regulations for the administration of Tidal Wetlands Moratorium Permits. Section 660.5 of the Rules and Regulations reads as follows:

> "660.5 Standards for the issuance of a moratorium permit. The basis for the issuance of a moratorium permit shall be a determination that the petitioner has established that the proposed alteration of the state of the tidal wetland is not contrary to (a) the policy of the State to preserve and protect tidal wetlands, to prevent their despoliation and destruction and to give due consideration to the reasonable economic and social development of the State; and (b) the provisions of Article 25 of the Environmental Conservation Law."

2. The criteria upon which a decision is made in any application filed under Section 15-0503 of the Environmental Conservation Law is contained in Section 608.6 entitled "Standards" of the Official Compilation of Codes, Rules and Regulations of the State of New York (6NYCRR - Conservation). This section reads as follows:

> "608.6 Standards. (a) The basis for the issuance of a permit shall be a determination that the proposal is in the public interest in that:
>
> (1) The proposal is reasonable and necessary.
>
> (2) The proposal will not endanger the health, safety, and welfare of the people of the State of New York.
>
> (3) The proposal will not cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the State, including soil, forests, water, fish and aquatic and land related environment."

3. The underwater lands to be disturbed by the pile driving operation lie entirely beneath tidal waters and do not include any disturbance of wetlands vegetation or marsh areas.

4. The installation of the series of dolphins or clusters of piles is not contrary to (a) the policy of the State to preserve and protect tidal wetlands, to prevent their despoliation and destruction and to give due consideration to the reasonable economic and social development of the State; and (b) the provisions of Article 25 of the Environmental Conservation Law.

5. It is not anticipated that there will be any roiling of the water except in the immediate vicinity of the piles only during the limited period when the piles are actually being driven.

There are no applicable Federal effluent limitations or other limitations or standards under Sections 301, 302, 306 or 307 of the FWPCA. However, in order to assure that the Applicant will comply with other applicable limitations under State law and with other appropriate requirements of State law, a general limitation should be set forth in the certification under Section 401 of the FWPCA requiring the Applicant to comply with applicable requirements of State law.

6. The Applicant's proposed project is reasonable and necessary, will not endanger the health, safety and welfare of the people of the State of New York, and will not cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the State, including soil, forests, water, fish and aquatic and land related environment.

7. A Tidal Wetlands Permit, Stream Protection Permit and Water Quality Certification should be issued to the Applicant.

DECISION

The foregoing Report of Hearing Officer Donald F. Carson, dated July 3, 1974, including recommended Findings and Conclusions and Recommendations, is hereby adopted and incorporated by reference as if set forth in this decision.

Such Conclusions and Recommendations permit the Department of Environmental Conservation to approve of the said application, maps and plans of Mascony Transport & Ferry Service, Inc., as thus modified.

IN WITNESS WHEREOF, the Department of Environmental Conservation has caused this determination and approval to be signed and has filed the same with all maps, plans, reports, and other papers relating thereto in its office in the County of Suffolk this 3rd day of July, 1974.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

J. L. BIGGANE
Commissioner

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION   PERMIT NO. TW 15277-0053 WQ-SP

PERMIT UNDER ARTICLE 25, TITLE 2 (TIDAL WETLANDS) & ARTICLE 15, TITLE 5 (PROTECTION OF WATERS OF THE ENVIRONMENTAL CONSERVATION LAW

LICANT
MASCONY TRANSPORT AND FERRY SERVICE, INC.

CANT'S ADDRESS
Room 206, Masonic Building, New Bedford, Massachusetts 02740

PPLICANT IS HEREBY PERMITTED TO:
Install pile dolphins in an existing ferry slip in accordance with plans which were prepared by Young and Young, Consulting Engineers and filed at the hearing on December 4, 1973.

CATION
Greenport Harbor

TOWN, COUNTY
Town of Southold, Suffolk County

ECTION OF TIDAL WETLAND TO WHICH THIS PERMIT APPLIES
Greenport Harbor

E: (a) This permit does not relieve the Applicant of responsibility for damages to riparian owners or others.

(b) If the structure or work herein authorized is not completed on or before May 1 19 75, or upon the completion of the inventory of tidal wetlands for this area pursuant to Article 25 of the Environmental Conservation Law, whichever occurs first this permit, if not specifically extended, shall cease and be null and void.

CONDITIONS

1. The permitted work shall be subject t inspection by an authorized representative f the Department of Environmental Conservation who may order the work suspended if the b lic interest so requires.

2. The Applicant shall file in the office o the Local Tidal Wetlands Permit Administrator a notice of intention to commence work at least 5 days in advance of the time of commencement a shall also notify him promptly in writing of t completion of the work.

3. As a condition of the issuance of this p mit, the Applicant has accepted expressly, by the execution of the petition, the full legal responsibility for all damages, direct or indirect, o whatever nature, and by whomever suffered, a sing out of the project described herein and has agreed to indemnify and save harmless the State f m suits, actions, damages and costs of every n e and description resulting from the said project.

4. Any material to be dredged under this proposal shall be removed evenly without leaving la refuse piles, ridges or deep holes across t bed of the tidal wetland.

5. Any material to be placed as fill either in the waters of the State or on shore above the high-water mark, shall be contained by a suitable bulkhead or other structure to prevent any erosion of the fill back into the waters of the State.

6. There shall be no unreasonable interference with navigation by the work herein authorized.

7. The Department reserves the right to reconsider this approval at any time and after due notice and hearing to continue, rescind or modify this permit in such a manner as may be found to be just and equitable. If upon the expiration or revocation of this permit, the modificatio of the tidal wetland hereby authorized has not been completed, the Applicant shall. without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

8. The State of New York shall in no case be liable for any damage or injury to the work herein authorized which may be caused by or result from future operations undertaken by the State for any purpose, and no claim or right to compensation shall accrue from any such damage.

9. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the Applicant.

10. All work carried out under this permit shall be performed in accordance with established engineering practices and in a workmanlike manner.

11. This permit shall not be constru as conveying to the Applicant any right to trespass upon the lands of others to perform the permitted work or as authori ing the impairment of any right, title o interest in real or personal property he or vested in a person not a party to the permit.

12. The Applicant shall comply with all applicable Federal, State and local statutues, ordinances, rules and regulations including, but not limited to, those relating to air and water pollution.

ADDITIONAL CONDITIONS:

The Applicant in accepting this permit signified his agreement to abide by the conditions set forth above.

APPLICATION DATE May 23, 1973	EXPIRATION DATE May 1, 1975	PERMIT ISSUED July 3, 1974
BY (PERMIT ADMINISTRATOR) J. L. BIGGANE, Commissioner	NAME AND ADDRESS New York State Department of Environment Conservation, 50 Wolf Road, Albany, New 122	

EA-8 (3/74)

PERMIT

No. 15277-0053

has been issued to: MASCONY TRANSPORT & FERRY
ROOM 206, MASONIC BLDG.
address: NEW BEDFORD, MASS. 02740
INSTALL PILE DOLPHINS IN EXIS. FERRY
for: SLIP - GREENPORT HARBOR, SUFFOLK CO.

under the Environmental Conservation Law,
Article 15, Title 5 (Protection of Water)
Article 25, Title 2 (Tidal Wetlands)

J. L. BIGGANE
Permit Administrator

JULY 3, 1974
Date Issued

MAY 1, 1975
Expiration Date

New York State
Department of Environmental Conservation

1A-9 [illegible]

APPENDIX "B"

APPENDIX "C

CITY OF NEW LONDON
CONNECTICUT

August 15, 1974

Interstate Commerce Commission
Washington, D. C.

Gentlemen:

SUBJECT: MASCONY, ICC LICENSE
File W1270

This communication is to advise you that the Administration Committee of the City Council of the City of New London met on the evening of August 14, 1974, and unanimously voted to recommend that the City of New London enter into a lease with Mascony Transport and Ferry Service, Inc., the leased premises being the municipal pier and the use intended being to accommodate the ferry service between the City of New London and the township of Greenport, Long Island.

The Administration Committee is made up of three of the seven members of the City Council. I have reason to believe that two other members of the City Council will support this proposal. This proposal will also carry the support and recommendation of the City Manager to the full Council Meeting of August 19 where final action will be taken.

This letter is forwarded to you pursuant to the appeal of Mascony Transport and Ferry Service, Inc., from your previous denial of permit and may be used in the appeal as you deem appropriate.

Very truly yours,

C. Francis Driscoll
City Manager

D:b

cc: Chairman, Council Committee on Administration

APPENDIX "D"

LEASE BETWEEN
CITY OF NEW LONDON
AND
MASCONY TRANSPORT AND FERRY SERVICE, INC.

THIS AGREEMENT, made by and between the City of New London, acting herein by C. Francis Driscoll, its City Manager, duly authorized LESSOR, and Mascony Transport and Ferry Service, Inc., acting herein by George R. Power, its President, duly authorized, LESSEE,WITNESSETH:

That the lessor has leased and does hereby lease to the lessee, for and in consideration of the rents and covenants hereinafter reserved and contained, and to be kept fulfilled on the part of said lessee, that portion of the City Pier and adjacent premises defined in Exhibit A attached hereto and made a part hereof, solely for the purposes of operating a ferry boat service from New London to Long Island. Any other use or uses of the premises shall be subject to negotiations between the lessor and lessee.

AND, the rental is $750. per month payable in advance commencing when the designated area is actually used by the ferry boat operation. Until that time the rental structure shall be as follows:

First three months	- 25% of $750. per month	- $187.50
Second three months	- 50% of $750. per month	- $375.00
Third three months	- 75% of $750. per month	- $562.00
Fourth three months	- 100%of $750. per month	- $750.00
Option term	- 100%of $750. per month	- $750.00

AND, the lease shall be for a twelve month period beginning September 1, 1974 and ending August 31, 1975, with option to renew for an additional six month period at the consent of both parties.

AND, the lessee does covenant to pay the lessor the said monthly rents as hereinbefore specified, and, further, that he will now, during the said term, assign or under-let said premises or any part therof without the permission in writing of the lessor, and will not occupy the said premises for any business other than a ferry boat service hereinbefore specified without the like consent.

AND, the said lessee does hereby further agree to comply with and conform to all the laws of the State of Connecticut, and the ordinances, rules, and regulations of the City of New London within which the premises hereby leased are situated, relating to health, nuisance, fire, highways and sidewalks, so far as the premises hereby leased are or may be concerned, and to save the lessor harmless from all fines, penalties and costs for violation of or non-compliance with same.

AND, the said lessee does hereby further agree to save the lessor harmless for loss or damage to any vehicle and to the contents of any vehicle while on the said premises.

AND, it is understood by both parties that the easterly end of the Pier is in damaged condition and there are no current specific plans for repair of that damage during the lease and option term.

AND, it is also understood by both parties the City of New London may continue to use this leased area of the Pier, at its discretion, until such time as the lessee becomes fully operational.

AND, the lessee will provide suitable liability insurance, which will include a hold harmless clause naming the City of New London as additional insured, for the premises it leases and that such insurance shall be subject to the approval of the Director of Law.

AND, the lessee will be responsible for routine maintenance, repair and cleaning of the premises it leases.

AND, any permanent improvements made to the Pier and the leased area will become the property of the lessor upon their completion or upon termination of the lease term.

AND, the lessee agrees to erect a suitable barrier, subject to the approval of the Director of Public Works, on the Pier between the area it leases and the remaining public area of the Pier.

AND, this lease does not include any exclusive right to the lessee to use any public on-street or off-street parking facilities other than those described in this agreement.

AND, the lessee shall insure that the designated parking, waiting, loading and unloading areas for taxicabs in the Union Railroad Station area shall not be obstructed by vehicles waiting to board the Ferry.

AND, the lessee agrees to provide, at no expense to the City of New London, uniformed City of New London Patrolmen for traffic control in the Union Station area should such be deemed necessary by the New London Chief of Police or his designated representative.

AND, it is agreed by the lessee that it will limit the motor vehicle Staging capacity of ~~each one of its ferry vessels~~ ~~the leased premises~~ to sixty motor vehicles. OF PAS. CAR DIMENSION OR THE EQUIV. OF

AND, it is agreed that if said rent shall remain unpaid sixty days after the same shall become payable or if any other provision of this lease is violated by the lessee, the lessor may recover possession of the leased premises in the manner prescribed by the Statute relating to Summary Process, and all right to any notice to quit possession is expressly waived by the lessee.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and to a duplicate of the same tenor and date, this day of , 1974.

Signed, sealed and delivered in the presence of:

____________________	CITY OF NEW LONDON
____________________	By: ____________________ (L.S.) C. Francis Driscoll, City Manager
____________________	MASCONY TRANSPORT AND FERRY SERVICE, INC.
____________________	By: ____________________ (L.S.) George R. Power, Its President

STATE OF CONNECTICUT)
) ss. New London 1974
COUNTY OF NEW LONDON)

Personally appeared the CITY OF NEW LONDON, acting herein by C. Francis Driscoll, its City Manager, duly authorized, signer and sealer of the foregoing instrument and acknowledged the same to be his and its before me.

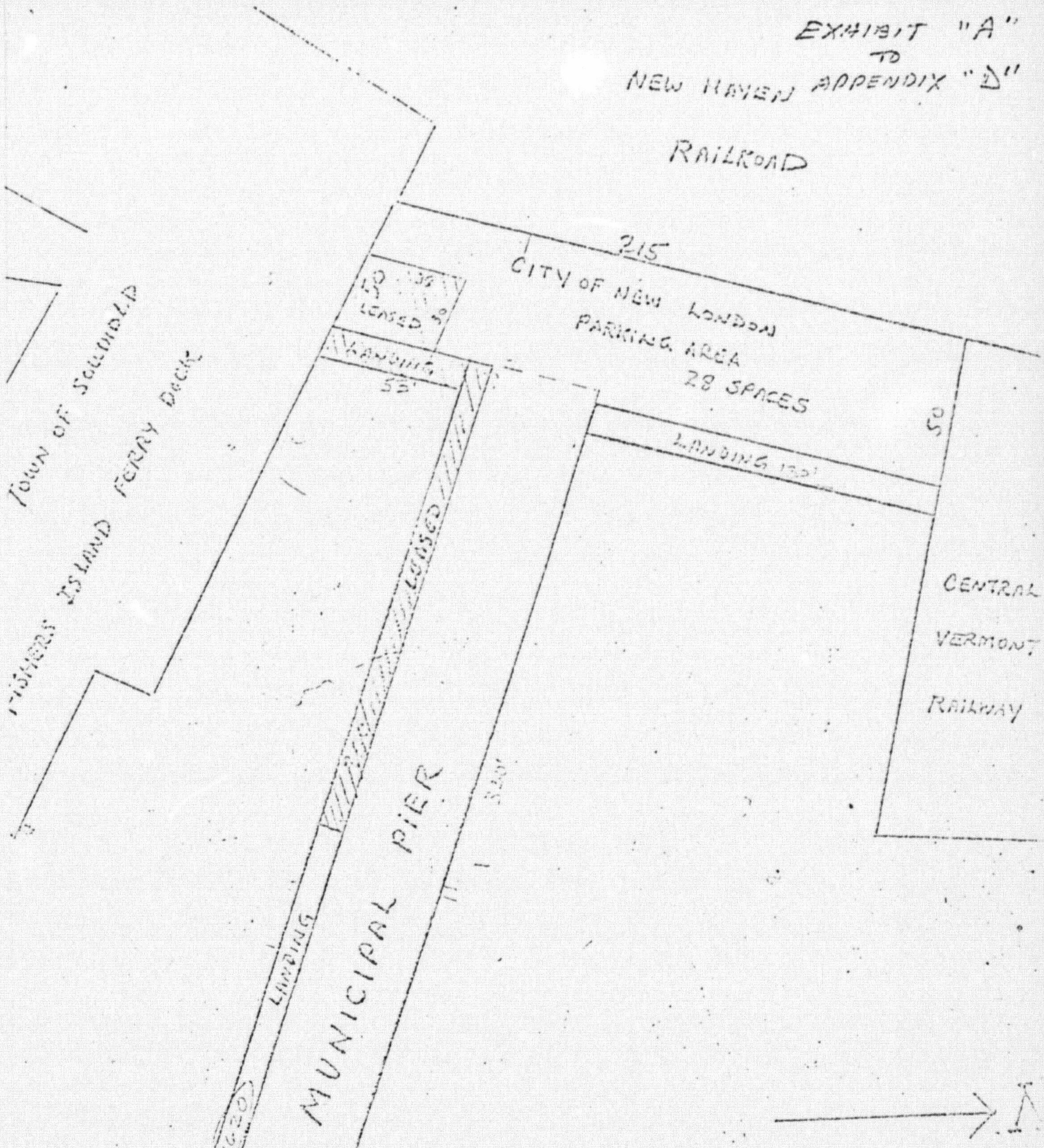
____
Notary Public

STATE OF CONNECTICUT)
) ss. New London
COUNTY OF NEW LONDON)

Personally appeared MASCONY TRANSPORT AND FERRY SERVICE, INC. acting herein by George R. Power, its President, duly authorized, signer and sealer of the foregoing instrument and acknowledged the same to be his and its free act and deed, before me.

____
Notary Public

EXHIBIT "A"
TO
APPENDIX "D"


NEW HAVEN
RAILROAD
TOWN OF SOUTHOLD
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215
50
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53'
CITY OF NEW LONDON
PARKING AREA
28 SPACES
50
LANDING 130'
CENTRAL
VERMONT
RAILWAY
LEASED
MUNICIPAL PIER
380'
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GG20
10
40
50
THAMES RIVER
- NEW LONDON HARBOR -
N

David J. Willmott, Editor

APPENDIX "E"

Good Service Turned Down

"incredible", "unbelievable", were reactions from the public when it was announced the Interstate Commerce Commission had turned down Mascony's application to put into service a new ferry for crossing the Sound. The public is stuck with the McAllister service which it has been suffering with for years.

Testimony in favor

Testimony given by the public at the hearings, both in New Haven and Greenport, was overwhelmingly in favor of the Mascony proposition. The public is so desperate for good, year-round, reliable service, they would have accepted just about any alternative to the present service. This was not what the ICC was asked to accept.

The Mascony proposition was excellent. The ferry boats are designed to be just that. They are ferries that were used to cross the Chesapeake Bay, designed to accommodate passengers, cars and trucks. The program and schedules proposed by the Mascony organization far surpass those of the McAllister group. Mascony planned to run year round and was willing to accept up to 50 per cent of its capacity on a reservation basis.

Protecting whose interest?

The ICC, instead of protecting the public interest seemed more intent on protecting the monopoly of franchise holders. For some reason the ICC has the queer notion that competition would hurt overall service.

We have yet to see where competition, free of government controls, has hurt the public. Generally what happens is competition causes those involved to continually improve service, lower rates -- and because of this, more people use the service, which results in greater profits.

In cases where the government grants monopolies to outfits such as McAllister, or to companies like LILCO and the telephone company, service becomes a word to be laughed at, rates skyrocket and the public is abused.

Why?

We can see no logical reason why this application was turned down, or why it took the length of time it did to process, except that it was handled by a government bureaucracy that just doesn't give a damn about the public.

If you feel as we do -- that this was an unfair and unjust decision -- we encourage you to write your feelings to Gerald H. Curry, District Supervisor, Interstate Commerce Commission, Washington, D.C. 20423, immediately, as there is a slim change this case may be re-opened. You will also find it effective to send a copy of this to your Congressmen, Otis Pike or James Grover, and to Senators James Buckley and Jacob Javits at their addresses listed below.

Let these men know you do not feel your government is working for, or is looking out for your interests and that you intend to show your displeasure come November with those who are in office and are responsible for making it all happen. And why not?

Otis G. Pike, 132 Ostrander Avenue,
Riverhead, N.Y. 11901.

James R. Grover, 135 Woodsome
Road, Babylon, N.Y. 11702.

Senators James Buckley and Jacob
Javits, U.S. Senate Office Building,
Washington, D.C. 20501.

SUFFOLK LIFE

David J. Willmott · Editor and Publisher

General Information

willmott's and why-nots

David J. Willmott, Editor

APPENDIX "F"

Why Should We Subsidize McAllister?

If the Lord helps those who help themselves, then He surely is confused when He looks down on the ferries which jolt their way between Orient Point and New London.

For this week, James McAllister, operator of the current ferry "service" told us, with hope in his eye, that if the State of New York helps him with money, he'd buy the new boats he's been promising to buy.

In other words, if he doesn't get the money, you can still plan to line up for hours on end to drive onto his World War II landing craft. Then you'll really drag out every prayer you've ever learned.

On the other hand, there's the Mascony Company who proposes to put big, safe ferries into use right now, without requiring one dime of your taxes. It seems to be a case of which firm has better political connections. Mascony's proposal (the one for good service without need of tax money) was turned down by the Interstate Commerce Commission which regulates such things.

Why should the public be asked to subsidize a private corporation that has a monopoly granted by Interstate Commerce regulations, when another entrepreneur has requested permission to operate and is not asking for a subsidy? The public needs good ferry service. It should have it. The public could have it and would have it if Mascony's application had been approved.

The application was denied and now we have left a sole operator saying he cannot give the service to the public unless he can look forward to being subsidized with our tax dollars. It just doesn't make any sense at all. Meanwhile, Speaker Perry Duryea "is working on getting us some help", McAllister told a Suffolk Life reporter.

Washington's political arrogance has nothing on Suffolk County. It's an election year, yet our politicians feel they can get away with making us wait a half-day or more to get on a creaky ferry boat, and use our tax money to bail out the boat!

If we're dumb enough to put up with that at the polls this November, we'd better call on God for His help, because we'll really need it. Wonder if Noah had these kinds of problems? And why not?

SUFFOLK LIFE
NEWSPAPERS

Official Newspaper ... Town

David J. Willmott - Editor and Publisher

General Information

APPENDIX "G

letter

Ferry service "very shoddy deal"

Open Letter
Senator Buckley
Senator Javitz
District Supervisor Gerald Curry

Dear Sirs:

I don't know if you are aware of a situation whereby a good number of your constituents are victims of a very shoddy deal.

Briefly, the situation concerns the McAllister Company which runs (quite incompetently) a ferry service between Orient Point, L.I. and New London, Conn.

For years they have used obsolete ferries (up to last year only two, when they added another old tub) each of which jam in tight packed cars and trucks to a total capacity of some 22 vehicles. Their facilities at either terminus (to say nothing of the ferries themselves) are relics of a bygone era. The Orient Point terminal doesn't even have lavatory facilities, nor are there more than two or three public benches for the many people who must wait hours if their cars are number 22 or 23, etc., in the long line waiting to board.

Relief was offered last year by a group (Mascony) which wished to exercise its competitive rights by offering ferries built to accommodate about 140 vehicles, superior arrangements for both passengers and vehicles, modern facilities and all around better service.

I.C.C. hearings were held some time ago, both in Greenport and in New Haven, and testimony by the public was overwhelmingly in favor of the Mascony proposition. For some reason which we, the public, fail to fathom, the I.C.C. rejected the Mascony request and thereby perpetuated a monopoly which, to put it mildly, is a gross disservice to the public you represent.

Finally, and of greatest importance, McAllister has rubbed great gobs of salt into our festering wounds by increasing the fares by over 60 per cent for a car and driver and 40 per cent for passengers!! And that is one way only!!!

We cannot reasonably assume that you are aware of this situation and have not acted upon it. For this reason we are, in behalf of all your constituents who use this public service, calling it directly to your attention.

We ask you, Sir, to look seriously into the matter and employ the full measure of the power and prestige of the high office to which we elect you.

Respectfully,

Mr. and Mrs. H.H. Kaplowitz
Sag Harbor

State of New York

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Tidal Wetlands Application No. TW-15277-0053

In the Matter of the Application

- of -

MASCONY TRANSPORT & FERRY SERVICE, INC.

Report by

Donald F. Carson
Hearing Officer

I, Donald F. Carson, hereby submit this hearing officer's report including recommended Findings and Determinations.

Dated: Albany, New York
July 3, 1974

Donald F. Carson
Hearing Officer

DOCUMENT 221

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC. INITIAL OPERATIONS - NEW LONDON TO GREENPORT, L. I., NEW YORK

REPLY TO APPLICANT'S EXCEPTIONS AND PETITION TO REOPEN THE RECORD FOR RECEIPT OF FURTHER EVIDENCE

NEW LONDON FREIGHT LINES, INC.
BRIDGEPORT AND PORT JEFFERSON
STEAMBOAT CO.

By Donald Macleay
Peter A. Greene

Their Attorneys

Of Counsel:

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1625 K Street, N. W.
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Due Date: September 30, 1974

Before the

INTERSTATE COMMERCE COMMISSION

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MASCONY TRANSPORT AND FERRY SERVICE, INC.
INITIAL OPERATIONS - NEW LONDON
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I

PRELIMINARY STATEMENT

By application filed with the Commission on May 29, 1973, and published in the Federal Register on June 21, 1973, Mascony Transport And Ferry Service, Inc. (Mascony) seeks authority:

> to engage in operation, in interstate or foreign commerce, as a common carrier by water in the transportation of general commodities and passengers, by self propelled vessels, between the ports of New London, Conn., and Greenport, Long Island, N.Y.

Protests to the application were timely filed by New London Freight Lines, Inc. (NLFL), Bridgeport And Port Jefferson Steamboat Co. (B&PJ), and Local 333, Marine Division, National Maritime Union, ALF-CIO. Thereafter, the application was assigned for oral hearing and hearings were held before Administrative Law Judge David H. Allard at New [illegible], Connecticut, on October 29, 30 and 31 and November 1, 1973, [illegible] Greenport, New York, on December 10, 11, 12 and 13, 1973, and January 8, 9 and 10, 1974, and at Washington, D. C., on February 20, 1974.

During the course of the hearings leave to intervene was requested by and granted to Connecticut Department of Transportation (Tr. 4, 39-40), Shelter Island & Greenport Ferry Co., Inc. (Tr. 743-4), East End Supply Company, Inc. (Tr. 743-4), New York State Department of Transportation (Tr. 1735-6, 1861) and The Planning Board of the Village of Greenport, New York (Tr. 2249, 2254).

By order served March 26, 1974, the record in these proceedings was closed as of March 19, 1974, and it was ordered that briefs be filed on or before May 6, 1974. By order of May 1, 1974, that date was later extended to May 23, 1974. Briefs were filed on behalf of applicant and jointly on behalf of NLFL and B&PJ. Thereafter on June 19, 1974, the Commission served the Initial Decision of Judge Allard denying the application due to applicant's failure to present for the Commission's consideration a proposal which was operationally feasible.

II

APPLICANT'S EXCEPTIONS

By a pleading filed with the Commission on or about August 19, 1974, applicant has taken exception to Judge Allard's Initial Decision. Although applicant's pleading suggests eight individual allegations of error, analysis of their content reveals that there are in reality only three. The first exception asserts that Judge Allard committed error in failing to make a specific finding as to whether the proposed service is required by the public convenience and necessity. Exceptions 2, 3, 4, 5 and 7 all allege in one fashion or another that Judge Allard committed error in his treatment of the evidence establishing that applicant's proposal would have unacceptably serious and adverse environmental consequences. The sixth exception attacks Judge Allard's finding that applicant's proposed method of operation at New London would create a serious safety hazard. The eighth exception is simply a gratuitous conclusory assertion that "The Administrative Law Judge erred in denying the application" and is apparently intended as a catch-all exception to cover any matters overlooked in the first seven exceptions.

Before proceeding to a substantive response to applicant's allegations protestants feel obliged to comment briefly upon the general tone and structure of applicant's exceptions.

To begin with, notwithstanding the rather clear requirements of Rule 96(a) of the Commission's General Rules of Practice (49 C.F.R. 1100.96(a)) the points relied upon by applicant in support of its eight exceptions are not stated and numbered separately. Instead, the listing of the eight numbered exceptions is followed by a rambling, uninterrupted discussion of some 22 pages which does not appear to be keyed into the eight exceptions in any particular way. Rather, the Commission and protestants are left to choose for themselves which arguments are intended to support which exceptions and to sort them out accordingly. In responding to applicant's arguments protestants have attempted to perform this task as accurately and carefully as possible bu they ask the Commission's indulgence in this regard to the extent that they may have matched up an argument with the wrong exception.

Far more serious than the formal deficiencies of applicant's pleading are some of the totally unwarranted pejorative representations made without the slightest evidentiary support in the record. Foremost among these are the two editorials and one letter to the editor of a throw-away newspaper in which applicant has been a full-page advertiser. These documents which contain flagrantly false assertions, which applicant by virtue of its participation in this proceeding must have known to be false, are appended to its exceptions as appendices E, F and G. They are not in evidence in this proceeding and applicant does not even attempt to have them received in evidence since they are not included or referred to in its "Petition To Reopen The Record For Receipt Of Additional Evidence". The conspicuous omission of such "evidence" from the scope of applicant's petition suggests that even it recognizes that such material would have been inadmissible even if tendered at oral hearing through a witness who could be cross-examined so as to demonstrate its totally scurrilous and patently false nature. Notwithstanding, applicant has deliberately placed such material before the Commission in a totally improper effort to influence its action with unsubstantiated and highly prejudicial prevarications in a belated effort to compensate for the evidentiary deficiencies of the case which it had ample opportunity to present.

In the same manner, applicant has attempted to play on the Commission's sympathy by alleging that:

> On the strength of that resolution [a resolution of the Board of Trustees of the village of Greenport which was received in evidence as Exhibit 90] of the Village Trustees which supercedes any action taken by the Village Planning Board, applicant acquired substantial real estate in the Village of Greenport, Long Island, New York in order to inaugurate and institute its proposal.

Examination of Exhibit 90 reveals that it was enacted on June 18, 1973. On March 30, 1973, almost three months prior to the date of the resolution applicant acquired the so-called "Bohack" property in Greenport (See Exhibit 38). On May 21, 1973, almost one month prior to the date of the resolution applicant acquired a license to utilize the so-called "Mitchell" property in Greenport (see Exhibit 89). On May 9, 1973, more than one month prior to the date of the resolution applicant acquired the so-called "Reynolds" property in Greenport, N.Y. (See Exhibit 92). Thus the contention that applicant acquired its Greenport properties in reliance upon any action of the Village of Greenport is patently false and protestants request that the Commission give appropriate consideration to such misrepresentation in evaluating the credibility of applicant's entire presentation.

Applicant has also liberally laced the text of its exceptions with such unsubstantiated assertions as:

> The City of New London, Conn., was deeply concerned with the denial of the application by the Administrative Law Judge (Exceptions, p. 21).
>
> While officials of the City of New London, Conn., and the Village Trustees of Greenport, Long Island, were shocked at the initial decision, the public was equally shocked. (Exceptions, p. 25).

There is simply no evidentiary basis for such irresponsible representations.

Protestants' initial reaction to applicant's totally improper effort to influence the Commission with such materials was to move that they be stricken from applicant's pleading. On reflection, however, and in reliance on the fact that the Commission will recognize that such matter cannot properly be considered as evidence, protestants have concluded that the Commission's review of the propriety of Judge Allard's Initial Decision can best be accomplished if such materials are permitted to remain in and appended to applicant's pleading since they are far more instructive of applicant's disdainful and irresponsible disregard of the Commission's rules and regulations than anything that these protestants could possibly submit for the Commission's consideration. In this regard, protestants submit that the willingness of applicant to allow such tactics to be employed on its behalf is particularly relevant to consideration of Judge Allard's finding that applicant is not fit to receive operating authority from this Commission.

III

REPLY TO APPLICANT'S FIRST EXCEPTION SUGGESTING THAT THE PRESIDING ADMINISTRATIVE LAW JUDGE COMMITTED ERROR IN NOT MAKING A FINDING AS TO WHETHER THE PROPOSED SERVICE IS REQUIRED BY THE PUBLIC CONVENIENCE AND NECESSITY

In its first exception to Judge Allard's Initial decision, applicant suggests that the Judge committed reversible error by not making a finding as to public need for the proposed service. Such an allegation betrays a fundamental misconception of the statutory standard which governs the issuance of the franchise which applicant seeks in this proceeding. That standard, which is embodied in Section 309(c) of the Act (49 U.S.C. 909(c)), is two-fold. The first requirement goes to the question of the fitness of the applicant to provide the service which it proposes and the second goes to the question of public need for the proposed service.

The dual requirements of Section 309(c) like those of its counterpart provision, Section 207, are stated conjunctively rather than disjunctively thereby making clear that both requirements must be independently satisfied. The independent and cumulative nature of these requirements also has been recognized in the cases. See, for example, the following language of the Commission in Metler Hauling and Rigging Ext. - Loudoun County, Tenn., 117 M.C.C. 557, 559-560 (1972):

> Section 207 of the Act establishes, as preconditions to the issuance of a certificate of public convenience and necessity, findings (1) that the applicant for a certificate is fit, willing and able properly to perform a proposed service, and (2) that the proposed service is required by the present or future public convenience and necessity. Both findings must be made. One may not be based on the other. The findings concerning fitness should be based on evidence concerning the applicant alone, and not on how strong a case has been presented by the supporting shipper or protestants. We thus conclude here that applicant may not be found fit simply because the supporting shipper may need the proposed service and because protestants presented limited evidence as to their ability and willingness to perform that service.

See also in this regard Nationwide Carriers, Inc., Ext. - Foodstuffs, 120 M.C.C. 353, 358 (1974) where the Commission, after citing Metler, observed that:

> If a determination of applicant's fitness is based on shipper need or other collateral factors, an unfit carrier could obtain authorization to provide transportation services for which a real need has been shown. Such a situation would not be in the public interest because a need for service cannot be met by an unfit carrier.

Here, Judge Allard's decision is based upon applicant's failure to satisfy its burden as to the first showing that it must make, i.e. fitness. Since applicant so clearly failed to satisfy its affirmative evidentiary burden with respect to that first required finding, the second simply became moot and Judge Allard's determination not to make a gratuitous finding as to that second requirement hardly constitutes reversible error.

IV

REPLY TO APPLICANT'S ALLEGATIONS THAT THE PRESIDING ADMINISTRATIVE LAW JUDGE COMMITTED ERROR IN HIS TREATMENT OF THE EVIDENCE ESTABLISHING THAT APPLICANT'S PROPOSAL WOULD HAVE AN UNACCEPTABLY SERIOUS AND ADVERSE ENVIRONMENTAL IMPACT

In its exceptions 2, 3, 4, 5 and 7 applicant asserts in various repetitive ways the allegation that Judge Allard somehow committed error in his treatment of the evidence demonstrating that applicant's proposal if implemented would have sufficiently adverse environmental consequences so as to preclude a favorable finding by the Commission as to the probable environmental consequences of applicant's proposal.

Applicant's attack on this facet of the Judge's Initial Decision proceeds from two fundamentally faulty premises. First, applicant's argument proceeds from a basic and gross misstatement of the evidence. Secondly, it misconceives the purpose and application of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.).

Applicant repeatedly asserts that the record contains no suggestion of any environmental concern by anyone. For example, at pages 16-17 of its exceptions applicant states:

> At no time whatsoever during the course of the proceeding were any environmental issues raised to the extent that anyone would be aware that the subject proceeding was one of a major Federal action.

Again at page 19 of its exceptions applicant asserts that:

> It is interesting to note, that none of the protestants nor any of the intervenors alleged any substantial environmental impact.

Such assertions simply disregard the poignant testimony of Greenport residents such as Thomas Jurzenia (Tr. 1622), Edgar Marvin (Tr. 1626), Nancy Graham (Tr. 1636), May Watson (Tr. 1639), and Arthur Levine (Tr. 1644) who pleaded with the Commission to give consideration to the fact that inundation of auto and truck traffic with which applicant's proposal would smother downtown Greenport would virtually and totally destroy the entire character of the community. It ignores the testimony of Loraine S. Terry, President of the North Fork Environmental Council, Inc., a group with more than 400 members who are vitally concerned with preservation of the environmental quality of the North Fork of Eastern Long Island . In concluding her testimony which related primarily to the massive traffic problems that would be created by applicant's proposal Mrs. Terry stated (Tr. 1646A):

> I want to say that I was neither for nor opposed to the ferry line. I was simply concerned with the massive traffic problem that would come about due to this ferry being in this particular location.

It ignores the fact that, with the possible exception of the

Connecticut Department of Transportation[1], the participation of virtually every party of record other than applicant, NLFL and B&PJ had its basis in concern over the impact of applicant's proposal on the quality of the human environment. In particular the Planning Board of the Village of Greenport presented important evidence relevant to the calamitous impact of the traffic which applicant's proposal would funnel through the already congested streets of downtown Greenport[2].

Applicant's response to these compelling concerns was a description of a traffic control "plan" which amounted to nothing more than confused double-talk (Tr. 1557-1560). When pressed for specific details of its plan which, among other features, calls for unleashing of cars and trucks into the crowded streets of downtown Greenport at the rate of one every 6 seconds (Tr. 1576-7), applicant's response was that consideration of such matters is "premature" (Tr. 1583-4).

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[1] The participation of the Connecticut Department of Transportation was directed to the hazard inherent in applicant's proposed plan of access to and egress from its ferry boat at New London, Conn. Even that concern arguably comes within the ambit of the larger consideration of quality of the human environment.

[2] Although applicant attempts to renew its motion to strike certain of that evidence, any objection which it might have had to its admission was waived by applicant's failure to pursue its motion on brief as required by Rule 87 of the Commission's Rules of Practice (49 C.F.R. 1100.87).

Applicant similarly chooses to conveniently overlook the extensive testimony of protestants and cross-examination of applicant's witnesses on the subject of the environmental impact of the tremendous fuel consumption of the inefficient 40 year old steamboat which it proposes to operate. It ignores the environmental consequences of the discharge of the human wastes of 800 passengers per day in Greenport Harbor by a vessel which is not equipped with holding tanks. It ignores the environmental impact of bringing a vessel 350 feel in length into a confined harbor filled with small sailboats and other pleasure craft. All of these considerations were raised during the course of hearings. None were properly answered by applicant. Thus applicant's factual predicate for the arguments which it makes in support of these exceptions is simply not supported by the record. Very serious environmental issues were raised.[3/]

Applicant's interpretation of the applicability of NEPA to this proceeding is as faulty as its characterization of the facts of record. Basically, applicant, with apparent seriousness, espouses the thesis that the Judge did not make all of the

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[3/] The fact that there may not have been full compliance with all of the technical requirements of 49 C.F.R. 1100.250 is inconsequential in terms of applicant's obligation to properly address itself to such matters. See City of New York v. United States, 337 F.Supp. 150 (E.D. N.Y. 1972).

specific findings required by Section 102(2)(c) of NEPA and having failed to do so, the application cannot be denied on environmental grounds. What applicant fails to realize is that NEPA, as its name denotes, is an environmental protective statute. Its purpose is to foreclose agency actions which may be environmentally damaging unless and until careful consideration is given to their environmental impact. Only after such requirements have been complied with can such actions be taken.

What applicant is suggesting is that, if the provisions of NEPA are not complied with, the sanction to be imposed is to take the environmentally damaging action notwithstanding lack of compliance thereby defeating the whole purpose of the statute. Obviously, the statute was not intended to be applied so as to produce such a catch-22 result and, therefore, such a manifestly absurd argument must necessarily fall of its own weight.

Furthermore, where, as here, the negative environmental impact of a proposed action is so patent and so serious as to be readily apparent without going through all of the detailed procedures provided for in NEPA, it would clearly be a waste of time and of the Commission's limited resources to go through all of those procedural requirements only for the purpose of reaching an ultimate conclusion which is already glaringly obvious.

That is precisely why Judge Allard took the course of action that he did. He recognized the unavoidable negative environmental impact of applicant's proposal and took the only action open to him or to the Commission with or without going through all of the elaborate procedural requirements of NEPA. Since the outcome would be the same with or without those procedural steps applicant cannot have been prejudiced by the Judge's unwillingness to engage in what, under the circumstances of this case, would have been nothing more than a useless exercise.

V

REPLY TO APPLICANT'S ALLEGATION CONCERNING THE JUDGE'S FINDING THAT THE PROPOSED TERMINAL OPERATIONS AT NEW LONDON, CONN., WOULD PRESENT A SERIOUS AND INSURMOUNTABLE SAFETY HAZARD

A substantial portion of applicant's exceptions is devoted to argument in support of its contention that Judge Allard committed error in finding that the inherent danger of the proposed method of access and egress at New London, Conn., precluded a finding of operational feasibility. As the record demonstrates the proposal presented to Judge Allard contemplated a ferry landing site at New London, Connecticut, which would have all traffic moving directly off the ferry boat and on to the main line of the Penn Central System between New York and Boston over which Penn Central operates its high speed passenger trains (Ex. 33). Right at the very outset of the hearings this problem was brought to the attention of applicant by the intervention of the Connecticut State Department of Transportation. The express purpose of that intervention was to bring this dangerous condition to the Commission's attention and request that it be given appropriate consideration in the evaluation of applicant's proposal (Tr. 7, 39). Yet throughout the entire course of the hearings applicant failed to respond to this very serious and legitimate concern. Instead, applicant's operating witness displayed a disdainful indifference to the whole problem indicating that it saw no point in even making any investigation of rail operations over the tracks in question so as to insure that its proposed operations could be coordinated with those of Penn Central (Tr. 178-180). Instead, applicant's witness presented a lot of vague testimony about alleged federal government plans to build some sort of overpass some distance from its property from which some undisclosed party was also, according to applicant's witness, going to build a road to connect to applicant's proposed landing site (Tr. 180-182).

This was the condition of the record at the time Judge Allard made his decision. Despite the fact that applicant had the extraordinary opportunity to patch up its proposal even to the extent of being permitted to present under the guise of rebuttal what was properly part of its direct case, it never made any effort to clearly respond to this serious problem which precipitated participation by the Connecticut Department of Transportation. Now, after Judge Allard has rendered his decision on the basis of the record as it stood at the close of hearings, applicant virtually concedes the lack of operational feasibility of its original proposal by submitting a new plan involving use of the New London City pier, which is located some distance from its original docking site.

As a preamble to the submission of its revised proposal applicant makes a final effort at defending its original concept of operation in the form of a lengthy discussion of a legislative proposal which, if it were ever to come to fruition, would at best grant an exception to the present statutory prohibition against reopening grade crossings as applicant proposes. At page 12 of its exceptions applicant suggests that Judge Allard committed error by "failing to consider" these matters but there is simply no basis for suggesting that the Judge did fail to consider them. On the contrary, the Judge's Initial Decision indicates that such matters were considered but that Judge Allard quite properly recognized that wishful anticipation of legislation removing serious statutory obstacles is no substitute for a concrete proposal which, at least on its face, would be operationally feasible.

Applicant's inaccurate conceptualization of the record is also apparent from its representation at page 12 of its exceptions that:

> ". . . the Administrative Law Judge has stamped a final disapproval of the safety precautions proposed to be taken by the City of New London, Conn."

The foregoing representation clearly illustrates the fundamental misconception upon which applicant has grounded its assertion that Judge Allard committed error in finding that applicant has failed to present an operationally feasible proposal. What Judge Allard obviously realized is what applicant is apparently incapable of realizing, namely the fact that the City of New London isn't going to take any safety precautions and that if any such precautions are going to be taken they are going to have to be taken by applicant. In this regard see the following testimony of New London City Manager Driscoll at transcript page 264:

Q Does the City of New London have any current plans for building an overpass or any other improvement on the DeNoia property over the Penn Central Railroad tracks?

A No, we have no current plans for that. At one time, we had in connection with our flood protection program, there was going to be a dike road, if you will. There was going to be a road on top of a dike that was going to have a touchdown point across Bank Street and just south of the DeNoia property, but that plan has been abandoned.

Again, at transcript page 267, Mr. Driscoll further emphasized the fact that any safety precautions which might be taken at applicant's proposed landing site, even assuming that necessary legislative relief is eventually secured, would have to be taken by someone other than the City of New London. Specifically, he stated:

Q Have you had any conversations with the Penn Central about installation of a failsafe system at the DeNoia properties specifically?

A No, we have not. All of our conversation with Penn Central to date has dealt with State Street. We would hope, however, that similar devices would be installed at all of the grade railroad crossings.

Q By the Penn Central?

A We really don't care whether it's by Penn Central or by someone who is given a license to have a private crossing, just as long as somebody will.

Thus, when one examines the facts of record, as Judge Allard obviously did, rather than applicant's highly distorted misconception of that evidence it is clear that the Judge's determination that applicant has failed to present an operationally feasible proposal is, in fact, the only determination that he properly could have made.

VI

REPLY TO APPLICANT'S PETITION TO REOPEN THE RECORD FOR RECEIPT OF ADDITIONAL EVIDENCE

These protestants respectfully submit that applicant's petition to reopen the record at this point in the proceedings must be denied for at least three reasons. First, when viewed in the context of applicant's performance to date in attempting to build a prima facie case as the proceeding has progressed rather than at its inception as contemplated by the Commission's Rules of Practice and by fundamental concepts of due process and orderly procedure, applicant's effort at this point to further butress its woefully inadequate case comes very close to an abuse of the Commission's process. Secondly, the evidence which applicant attempts to tender at this late date, even if received, would provide no basis for a decision other than that rendered by the Administrative Law Judge. Finally, receipt of such self-serving materials as applicant has tendered without affording protestants the opportunity to test their validity and the validity of the significance that applicant ascribes to them and to present competent rebuttal evidence would constitute a fundamental denial of due process.

In support of their first contention protestants direct the Commission's attention to applicant's track record to date in this proceeding. At the very outset of the proceedings applicant's principal operating witness was unprepared to present a prima facie case in that, although he cluttered the record with a welter of inconsequential documents and photographs, he did not have available for presentation to the Commission any evidence concerning a proposed plan of operation or financial and operating projections and related information from which the Commission could draw conclusions as to applicant's fitness. In order to make it possible for applicant to cure these fundamental defects in its presentation the presiding Judge allowed applicant to continue to present material relevant to its direct case throughout the course of hearings. Indeed, even after applicant rested its case and after protestants had made their presentations applicant was permitted under the guise of rebuttal to further patch up its direct case. Not completely satisfied with that extraordinary opportunity, applicant also took the liberty of improperly appending evidentiary documents to its brief without even seeking leave to have them received into evidence. Now, after the record has long since been closed, after briefs have been filed and considered, and after the trier of fact has rendered an initial decision applicant still seeks even further opportunity to shore up its presentation. Both the Commission and the courts have recognized that such tactics cannot be tolerated if the integrity of the administrative process is to be preserved. For example, in Stopping In Transit - Agricultural Implements, 303 I.C.C. 617 (1958) the Commission noted that exceptions to an initial decision are not the proper vehicle for introduction of additional evidence. Similarly, in People's Express, Inc., Ext. - Containers, 108 M.C.C. 174, 176 (1968) the Commission observed that its ". . . duty to maintain sound regulatory practices clearly dictates that proceedings must reach proper administrative finality in the shortest reasonable time consistent with due practice".

Also, as the Supreme Court recognized in Interstate Commerce Commission v. Jersey City, 322 U.S. 503, 514:

> One of the grounds of resistance to administrative orders throughout federal experience with the administrative process has been the claims of private

> litigants to be entitled to rehearings to bring the record up to date and meanwhile to stall the enforcement of the administrative order. Administrative consideration of evidence--particularly where the evidence is taken by an examiner, his report submitted to the parties, and a hearing held on their exceptions to it--always creates a gap between the time the record is closed and the time the administrative decision is promulgated. This is especially true if the issues are difficult, the evidence intricate, and the consideration of the case deliberate and careful. If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.

Thus, before the relief requested by applicant can be provided it must conclusively show that there is some compelling justification for the Commission to further delay the final disposition of a proceeding which has already been unduly protracted by applicant's tactics. That is a showing that has not been made and cannot be made. Application of the principle embodied in the foregoing cases therefore requires that applicant's petition be denied.

Indeed, even if the procedural infirmity of applicant's request were to be overlooked, the substantive inadequacy of the material that it seeks to introduce would require denial of the petition. Among the factors that the Commission has said are required before it will find that sufficient reason exists to reopen a proceeding for receipt of further evidence is a showing that the additional evidence that applicant seeks to present ". . . is likely to produce a different result. . ." Wilson Bros. Truck Line, Inc., Ext. - Frozen Foods, 94 M.C.C. 426, 428 (1964); Red Line Transfer & Storage, Inc., Ext. - West Monroe, La., 102 M.C.C. 486, 489 (1966). Here, the evidence tendered by applicant could not possibly produce a "different result".

What applicant seeks to show by means of the documents attached to its exceptions are: (1) that the New York State Department of Environmental Conservation has considered and ruled upon the negative environmental consequences of applicant's proposal which caused Judge Allard to deny the application (Appendices A and B to Applicant's Exceptions); and (2) that applicant has come up with a feasible alternative to the inherently dangerous and, under the present state of the law, apparently unlawful proposal originally submitted for Commission approval (Appendices C and D). Appendices E, F and G are not included in applicant's motion presumably because even applicant recognizes that they would have been clearly inadmissible as evidence even if they had been timely filed.

Appendices A and B could not possibly produce a result different than that embodied in the Initial Decision since they relate solely and exclusively to installation of a dolphin system at the proposed landing site at Greenport. They have absolutely nothing to do with the traffic congestion and water pollution problems with which the Administrative Law Judge was concerned in the Initial Decision. Similarly, Appendices C and D could not produce any "different result" since they consist only of an unexecuted draft of a lease agreement to utilize a pier of unknown suitability for applicant's proposed operation which the City Manager of New London had "reason to believe" would be approved at a meeting to be held on August 19, 1974. Although applicant has certainly not been reticent about updating its evidence, for some unexplained reason we have received no indication that the lease agreement was, in fact, executed on August 19 even though more than a month has now passed since that fateful day. Nor is there any evidence to support a finding that proposed ferry operations by applicant would be compatible with those already being conducted from the same pier, that the water off the pier is deep enough to accommodate a vessel of the size which applicant proposes to operate, that operation of such a large vessel in the confined waters of the Thames River would not create serious navigation problems, or that the City Pier could safely accommodate the type of elaborate equipment necessary to permit loading and unloading of applicant's vessel. In short, even if the tendered documents were received as competent evidence that some sort of lease arrangement had been entered into the record would still be devoid of many of the facts which are essential to a valid and meaningful determination that applicant's alternative proposal is operationally feasible. These protestants submit that it would be particularly inappropriate to give applicant the benefit of the doubt with respect to these critical factors in view of its performance record to date. From the very inception of this proceeding right up to the filing of its last pleading applicant's presentation has consisted largely of seemingly endless assertions of the soundness a particular feature of its proposal followed closely by a revision intended to cure the defect which it adamantly insisted did not exist. For this reason, protestants vigorously submit that receipt of any of the material tendered by applicant with its exceptions without affording the opportunity to test it under cross examination and to rebut those facts which these protestants know to be inaccurate would be seriously out of consonance with the Commission's characteristic adherence to fundamental fairness in all of its proceedings.

VI

CONCLUSION AND PRAYER

As its exceptions to the Initial Decision of Judge Allard, applicant has submitted a mixture of ad hominem allegations, misconstructions of the record, still further additional "evidence" intended to shore up the more glaring defects of its proposal and, finally, several highly inaccurate and prejudicial newspaper editorials apparently intended to improperly influence the Commission with material that even applicant recognizes is inadmissible. If anything, applicant's presentation confirms the correctness of Judge Allard's determination that the application must be denied. Bearing in mind that the authority which applicant seeks would place it in a position where virtually thousands of men, women, and children, in reliance upon applicant's ability and expertise to perform the service for which it has been licensed, would place their lives in the care of applicant the Judge who presided over the reception of evidence in this proceeding could not have properly granted applicant the authority which it seeks. Indeed, in the absence of a far more substantial demonstration than is present on this record, Judge Allard would have been seriously remiss in his duty if he had granted such authority. The exceptions filed by applicant do nothing to detract from the validity of Judge Allard's determination; rather by further demonstrating applicant's apparent disregard for candor and indifference to the integrity of the Commission's rules of procedure applicant has provided further evidence of the irresponsibility which compelled the Judge to deny the application.

With respect to applicant's petition to reopen for receipt of further evidence these protestants submit that the Commission has already been over-tolerant in permitting applicant to continually shore up its woefully inadequate case-in-chief. Further, to allow applicant to update its presentation without affording these protestants the same opportunity would be grossly unfair.[5/]

[5/] This is particularly so in view of the Judge's comments concerning the intentions of NLFL to upgrade its present service. Protestant submits that it would be totally inappropriate to receive additional evidence at this late date from applicant without affording NLFL to introduce evidence of the steps which it has taken in accordance with its assurances to the Commission and in reliance upon the Judge's Initial Decision. This would include, among other things, evidence of expansion of sailing schedules, new vessel acquisition, establishment of a reservations system, and the very sharp decline in intercity motor vehicle traffic as a result of the energy crisis.

WHEREFORE, for all of the foregoing reasons, applicant respectfully requests that the Commission enter an appropriate decision and order summarily affirming the Initial Decision of Judge Allard and denying applicant's petition to reopen the record.

Respectfully submitted,

NEW LONDON FREIGHT LINES, INC.
BRIDGEPORT AND PORT JEFFERSON
STEAMBOAT CO.

By ____________________________
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Due Date: September 30, 1974

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served upon counsel for all parties record via first class mail, postage prepaid, this 30th day of September 1974.

____
Peter A. Greene

DOCUMENT 249

SERVICE DATE
OCT 22 1975

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D.C., on the 17th day of October, 1975.

No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC., INITIAL OPERATIONS -
NEW LONDON TO GREENPORT, L.I., NEW YORK
(New Bedford, Mass.)

It appearing, That by application filed May 29, 1973, Mascony Transport and Ferry Service, Inc., of New Bedford, Mass., seeks authority to engage in operations in interstate or foreign commerce, as a common carrier by water in the transportation of general commodities and passengers by self-propelled vessels, between the ports of New London, Conn., and Green Port, Long Island, N.Y.;

It further appearing, That by an initial decision and recommended order of June 10, 1974, the Administrative Law Judge denied the application because of operational considerations (safety at New London, and environmental at Greenport);

It further appearing, That on August 19, 1974, applicant filed exceptions to the initial decision and a petition to reopen the record for the receipt of additional evidence, and tendered additional evidence consisting of (1) a report by the New York Department of Environmental Conservation concerning the improvement of a ferry slip in Greenport Harbor, (2) a permit to improve said slip, (3) a letter dated August 15, 1974, from the City Manager of New London indicating the city would enter into a contract with applicant for the use of the municipal pier as a docking facility, and (4) a copy of the lease between applicant and the City of New London; that a joint reply was filed September 30, 1974, by protestants New London Freight Lines, Inc., and The Bridgeport and Port Jefferson Steamboat Co.;

It further appearing, That replicants are commonly controlled, and that subsequent to the hearing and the filing of the reply, New London Freight Lines, Inc., sold certain of its authority competitive with that sought herein to another company and the remainder of its authority was cancelled pursuant to order of the Commission dated February 28, 1975, in Finance Docket No. 27846; that these protestants principal concern, as reflected by their reply, was the effect of any approval upon New London Freight Lines, Inc.; and that the unaffiliated company which acquired certain of said protestant's authority has not shown any interest in this proceeding;

It further appearing, That the evidentiary matters set forth above reflect changed circumstances with respect to applicant's use of facilities at New London, Conn., and Greenport, L.I., N.Y., and, the matters noted in the preceding paragraph reflect a material change in circumstances with respect to the status of the proceeding which is in effect, unopposed at this time; that accordingly, it is appropriate to reopen the record for the purpose of receiving the tendered additional evidence referred to above; and, in view of the status of the proceeding, consideration will also be given to evidence of record set forth in Appendix N and Q to applicant's petition for reconsideration of the Commission's order in Docket No. W-1270 (Sub-No. 2TA) dated February 3, 1975, which petition was denied by Commission order of April 4, 1975, as said appendices include a revised traffic pattern for vehicles exiting from applicant's ferry at Greenport and a copy of an executed lease, the unexecuted version of which is referred to under item (4) above;

It further appearing, That applicant's exceptions raise questions regarding whether or not approval herein on the present record, as well as in light of the additional evidentiary matters and changed circumstances referred to above would have a significant adverse effect upon the quality of the human environment, and, for this reason, and, subject to further Commission order, this proceeding should be reopened for further consideration on the record, as supplemented, and that prior to any further determination on the merits, an evaluation of the environmental effects of the proposed service should be made in accordance with the National Environmental Policy Act of 1969; and good cause appearing therefor:

It is ordered, That applicant's petition to reopen the record for the receipt of additional evidence should be, and it is hereby, granted, and the proceeding be, and it is hereby, reopened for the purpose of receiving said evidence in the record and to accord consideration to related evidence in Docket No. W-1270 (Sub-No. 2TA) as noted above.

It is further ordered, That, subject to further Commission order, an evaluation should be, and it is hereby, required to be made on the record, as herein supplemented, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et. seq., of the environmental effects of the proposed service.

It is further ordered, This order shall be effective on the date it is served.

By the Commission, division 1.

ROBERT L. OSWALD,
Secretary.

(SEAL)

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.,

INITIAL OPERATIONS - NEW LONDON TO GREENPORT, L. I., NEW YORK

MOTION FOR SUBSTITUTION OF PARTY

CROSS-SOUND FERRY SERVICES, INC.

Peter A. Greene
Its Attorney

Of Counsel:

MACLEAY, LYNCH, BERNHARD & GREGG
1625 K Street, N.W.
Washington, D.C. 20006

Dated: October 29, 1975

DOCUMENT 252

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.,

INITIAL OPERATIONS - NEW LONDON TO GREENPORT, L. I., NEW YORK

MOTION FOR SUBSTITUTION OF PARTY

Comes now Cross-Sound Ferry Services, Inc. (Cross-Sound) a Connecticut corporation with its principal place of business at 2 Water Street, New London, Connecticut 06320, and hereby moves the Commission for issuance of an order substituting it as a party protestant in the above-captioned proceeding as successor in interest to New London Freight Lines, Inc. (NLFL). In support of its motion Cross-Sound states as follows:

I.

By application filed May 29, 1973, Mascony Transport and Ferry Services, Inc. (Mascony) sought authority

> to engage in operation, in interstate or foreign commerce, as a common carrier by water in the transportation of general commodities and passengers by self-propelled vessels, between the ports of New London, Conn., and Greenport, Long Island, N.Y.;

Protests were duly filed by several parties including NLFL. The basis of NLFL's protest was the fact that the authority sought by Mascony would allow Mascony to divert traffic required by NLFL to sustain a financially viable operation under its authority to provide ferry service between New London, Connecticut, and Orient Point, N.Y.

Extensive hearings were held in which NLFL actively participated. Briefs were filed by various parties including NLFL and, on June 19, 1974, an initial decision was issued by Judge Allard, the administrative law judge who presided over the reception of evidence. On August 19, 1975, Mascony filed exceptions to Judge Allard's decision and petitioned the Commission to reopen the record for receipt of additional evidence intended to correct basic omissions in its case. Responses were filed to applicant's exceptions and petition by NLFL on September 30, 1974. From that date until October 22, 1975, the Commission took no action in connection with this case which would require a permit or filing of any pleading by any interested party.

By order served October 22, 1975, the Commission reopened the proceeding for receipt of certain supplemental material submitted by applicant and to consider the environmental effects of the proposed service.

While this proceeding was pending on exceptions the Commission, in Finance Docket No. 27846, authorized transfer to Cross-Sound of that portion of the operating authority whereby NLFL was authorized to provide service between New London, Conn. and Orient Point, N.Y. That transaction was consummated on May 23, 1975, and Cross-Sound has been providing service under such acquired authority since that date. As of the date of this motion, however, the Commission has not yet issued to Cross-Sound a certificate evidencing the authority which it has acquired.

II.

In its order of October 22, 1975, the Commission observed that: ". . .the unaffiliated company which acquired certain of protestant's operating authority [i.e. Cross-Sound] has not shown any interest in this proceeding" and that this proceeding ". . .is in effect, unopposed at this time. . .".

Cross-Sound submits that the foregoing observations are inaccurate. Since its acquisition of operating authority from NLFL was consummated Cross-Sound has had a vital and continuing interest in the instant application. It has not heretofore filed any pleading or representation herein on its own behalf only because nothing has occurred since the date of such consummation which would require or permit the filing of any such pleading. It has been Cross-Sound's intention to file a motion for substitution of parties at such time as a certificate was issued to it evidencing the authority which it has now acquired. Alternatively, if some action had been taken which required or permitted filing of a pleading prior to issuance of Cross-Sound's certificate, it had been Cross-Sound's intention to incorporate in its pleading a request that it be substituted as a protestant as successor in interest to NLFL. However, in view of the above noted observations of the Commission, Cross-Sound has concluded that it should promptly file this motion in order to correct the Commission's erroneous impression as to its vital and continuing interest in this proceeding.

III.

That Cross-Sound is entitled to the relief which it seeks is beyond any serious question. See, for example, Trans-Bridge Lines, Inc., Ext - Charter and Special Operations, 96 M.C.C. 506, 508 (1964) wherein the Commission granted the same relief sought here even where a formal motion for substitution apparently had not been filed prior to filing of a pleading on behalf of the successor in interest. In the Trans-Bridge case the Commission cited with approval its earlier decision in Dallas & Mavis Forwarding Co., Inc., Ext. - Galion, Ohio, 79 M.C.C. 285, 289-290 (1959) which contains language which suggests that a successor in interest to a party protestant acquires the status of a substituted party automatically as a matter of right without any requirement for filing of a formal motion. Specifically, the Commission stated that: "In the circumstances, and aside from the fact that GMS, as successor to Eldred Trucking, might properly be considered as a substituted party protestant in lieu of Eldred Trucking, we conclude that the examiner properly permitted the intervention of GMS, and we affirm his ruling thereon."

Finally, there can be no contention that applicant could in any way by prejudiced by grant of the relief requested herein. Applicant has been well aware of Cross-Sound's acquisition of the authority formerly held by NLFL authorizing operations between New London, Conn. and Orient Point, N.Y. since it was a vigorous protestant in Finance Docket No. 27846. Applicant is also very much aware of Cross-Sound's continuing opposition to its proposal as evidenced by Cross-Sound's opposition to the application for corresponding temporary authority in Docket No. W-1270 (Sub No. 2TA) of which the Commission takes notice in its order of October 23, 1975.

WHEREFORE, for all of the foregoing reasons Cross-Sound respectfully prays that an appropriate order be entered substituting it as a party protestant in this proceeding as successor in interest to NLFL.

Respectfully submitted,

CROSS-SOUND FERRY SERVICES, INC.

By________________________
Peter A. Greene
Its Attorney

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served upon counsel for all parties of record, via first class mail, postage prepaid, this 29th day of October, 1975.

____
Peter A. Greene

DOCUMENT 268

Docket No. W-1270 28

268

November 13, 1975

. A.J. Bacco
al Estate Department
ng Island Railroad
aica Station
maica, New York 11435

ear Mr. Bacco:

The Interstate Commerce Commission is in the process of preparing a port on the environmental impacts of the proposed Mascony ferry service between enport, Long Island, New York, and New London, Conn. (Docket No. W-1270).

In order to comply with our statutory responsibility under the National ironmental Policy Act of 1969, it is necessary that we analyze potential lternatives to the action under consideration. It is my understanding that ty and village officials once considered using the railroad dock at enport as a docking facility and the adjacent railroad right-of-way as a aging area for automobiles. To the extent that the railroad property may vide a feasible alternative to the presently planned docking site, it would e to be addressed in our environmental report.

In order to identify any obstacles to the ferry using the railroad perties for docking and staging purposes, it is important that you supply us h certain information concerning the status of the land. We would appreciate owing the railroad's position on the potential use of its land for ferry rposes, whether it owns the property in fee simple absolute or subject to a versionary interest, and whether there are any outstanding leases involving property. If the property is currently under lease, a copy of the lease or ummary of its terms would be appreciated.

Due to constraints imposed by a tight deadline in this case, I would quest that you furnish the needed information as soon as possible. My iling address is Room 2370, Interstate Commerce Commission, Washington, D.C. 423; phone number (202) 343-3759. Thank you for your assistance.

Yours sincerely,

Michael J. Fal
Attorney-Advisor
Environmental Staff

DOCUMENT 282

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.,

INITIAL OPERATIONS - NEW LONDON TO GREENPORT, L. I., NEW YORK

PETITION FOR RECONSIDERATION AND TO REOPEN FOR RECEIPT OF ADDITIONAL EVIDENCE

BRIDGEPORT & PORT JEFFERSON
STEAMBOAT CO.

CROSS-SOUND FERRY SERVICES, INC.

Peter A. Greene
Their Attorney

Of Counsel:

MACLEAY, LYNCH, BERNHARD & GREGG
1625 K Street, N.W.
Washington, D.C. 20006

Dated: November 21, 1975

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.,

INITIAL OPERATIONS - NEW LONDON TO GREENPORT, L. I., NEW YORK

PETITION FOR RECONSIDERATION AND TO REOPEN FOR RECEIPT OF ADDITIONAL EVIDENCE

Come now Bridgeport & Port Jefferson Steamboat Co. (B & PJ) and Cross-Sound Ferry Services, Inc. (Cross-Sound) and submit this their joint Petition for Reconsideration of the order of Division 1 entered herein on October 17, 1975, and for reopening of this proceeding for receipt of additional evidence. In support of their petition, B & PJ and Cross-Sound states as follows:

I.

PROCEDURAL BACKGROUND

By application filed May 29, 1973, Mascony Transport and Ferry Services, Inc. (Mascony) sought authority from the

Commission:

> to engage in operation, in interstate or foreign commerce, as a common carrier by water in the transportation of general commodities and passengers by self-propelled vessels, between the ports of New London, Conn., and Greenport, Long Island, N.Y.;

Protests were duly filed by several parties including B & PJ and New London Freight Lines, Inc. (NLFL), the predecessor in interest to Cross-Sound. The basis of the protests of B & PJ and NLFL was the fact that the authority sought by Mascony would allow Mascony to divert traffic required by B & PJ and NLFL to sustain financially viable operations under their authority to provide ferry service across Long Island Sound.

Extensive hearings were held in which B & PJ and NLFL actively participated. Briefs were filed by various parties including B & PJ and NLFL and, on June 19, 1974, an initial decision was issued by Judge Allard, the administrative law judge who presided over the reception of evidence. On August 19, 1975, Mascony filed exceptions to Judge Allard's decision and petitioned the Commission to reopen the record for receipt of additional evidence intended to correct basic omissions in its case. Responses were filed to applicant's exceptions and petition by B & PJ and NLFL on September 30, 1974. From that date until October 22, 1975, the Commission took no action in connection with this case.

While this proceeding was pending on exceptions the Commission, in Finance Docket No. 27846, authorized transfer to Cross-Sound of that portion of the operating authority whereby NLFL was authorized to provide service between New London, Conn. and Orient Point, N.Y. That transaction was consummated on May 23, 1975, and Cross-Sound has been providing service under such acquired authority since that date. Cross-Sound has duly filed a motion to have itself substituted as a party in this proceeding as successor in interest to NLFL.

By order served October 22, 1975, the Commission reopened the proceeding for receipt of certain supplemental material submitted by applicant and to consider the environmental effects of the proposed service.

II.

ALLEGATIONS OF ERROR

B & PJ and Cross-Sound take no issue with the Commission's determination that the potentially devastating environmental consequences of the proposed Mascony operation require the most thorough consideration. However, B & PJ and Cross-Sound respectfully submit that the order does contain certain other findings which are patently erroneous. Specifically, B & PJ and Cross-Sound respectfully submit that:

1. The Division committed error in finding that ". . .the proceeding. . .is in effect, unopposed at this time. . . ."

2. The Division committed error in reopening the record for the purpose of receiving late tendered evidence submitted

by applicant in a manner which deprives protestants of their right to cross-examine on and respond to such evidence;

3. The Division committed error in receiving as evidence of record in this proceeding unverified documents filed in Docket No. W-1270 (Sub 2 TA) in a manner which deprives protestants of their right to cross-examine on and to respond to such evidence.

III.

ARGUMENT

A. THE DIVISION COMMITTED ERROR IN FINDING THAT ". . .the proceeding is in effect, unopposed at this time. . . ."

In support of its contention that ". . .the proceeding. . . is in effect, unopposed at this time . . ." the Commission made several erroneous underlying assumptions. First it improperly assumed that B & PJ has no interest in this proceeding independent of the interest of NLFL. That assumption is patently incorrect. B & PJ duly filed its own protest in this proceeding. B & PJ has been represented by counsel throughout the entire proceedings. B & PJ submitted detailed evidence of the ferry service which it provides across Long Island Sound which would be adversely affected by grant of authority sought by Mascony. B & PJ submitted a brief and replied to applicant's exceptions to the initial decision of Judge Allard. It continues to provide the same service across Long Island Sound which was the basis of its original protest.

It continues to oppose Mahony's improvident proposal just as vigorously today as it did when it filed its protest. It has done nothing to waive its full rights as a protestant in this proceeding.

The Division is equally in error in assuming as it has that Cross-Sound, as successor in interest to NLFL, does not continue to oppose the application just as strongly as did its predecessor in interest.

In its order of October 22, 1975, the Commission observed that: ". . .the unaffiliated company which acquired certain of protestant's operating authority [i.e. Cross-Sound] has not shown any interest in this proceeding."

Cross-Sound submits that the foregoing observation is completely incorrect. Since its acquisition of operating authority from NLFL was consummated Cross-Sound has had a vital and continuing interest in the instant application. It did not file any pleading or representation herein on its own behalf only because nothing had occurred since the date of such consummation which would require or permit the filing of any such pleading. It had been Cross-Sound's intention to file a motion for substitution of parties at such time as a certificate was issued to it evidencing the authority which it has now acquired. Alternatively, if some action had been taken which required or permitted filing of a pleading prior to issuance of Cross-Sound's certificate, it had been Cross-Sound's intention to incorporate in its pleading a request that it be substituted as a protestant as successor in interest to NLFL. However, in view of the above noted observations of the Commission, Cross-Sound promptly filed such a motion on October 29, 1975, in order to correct the Commission's erroneous impression as to its vital and continuing interest in this proceeding.

That Cross-Sound is entitled to continue to participate in this proceeding as successor in interest to NLFL is beyond any serious question. See, for example, Trans-Bridge Lines, Inc., Ext - Charter and Special Operations, 96 M.C.C. 506, 508 (1964) wherein the Commission allowed such participation even where a formal motion for substitution apparently had not been filed prior to filing of a pleading on behalf of the successor in interest. In the Trans-Bridge case the Commission cited with approval its earlier decision in Dallas & Mavis Forwarding Co., Inc., Ext. - Galion, Ohio, 79 M.C.C. 285, 289-290 (1959) which contains language which suggests that a successor in interest to a party protestant acquires the status of a substituted party automatically as a matter of right without any requirement for filing of a formal motion. Specifically, the Commission stated that:

> In the circumstances, and aside from the fact that GMS, as successor to Eldred Trucking, might properly be considered as a substituted party protestant in lieu of Eldred Trucking, we conclude that the examiner properly permitted the intervention of GMS, and we affirm his ruling thereon.

The erroneous finding of the Division as to Cross-Sound's vital interest in this proceeding is also particularly ironic in view of the Division's determination to give recognition in this proceeding to materials submitted in Docket No. W-1270 (Sub 2 TA). The decision to accord such recognition confirms that the Division is quite familiar with that colateral proceeding. Yet, while it has decided to give recognition to unsworn allegations made by Mascony in that proceeding it has chosen to ignore Cross-Sound's vigorous participation therein including a complete explanation of its status as successor to NLFL and a complete refutation of the material which the Division would accept as uncontroverted evidence in this proceeding. Cross-Sound submits that such selective consideration is completely inequitable and constitutes fundamental error on the part of the Division.

Finally, Cross-Sound believes it is appropriate to note that a number of intervenors such as East End Supply Company, Inc. and the Village Planning Board of the Village of Greenport have continued to participate herein in opposition to the application. It would seem that in view of the relative inexperience of such parties in proceedings of this nature the Commission should be particularly sensitive to their interests rather than summarily dismissing them as the Division has done in its order.

For all of the foregoing reasons, B & PJ and Cross-Sound respectfully submit that an appropriate order should be issued setting aside the finding of the Division that the instant proceeding is effectively unopposed and recognizing the continuing interest of B & PJ and Cross-Sound and other parties that intervened in opposition to the application and have continued to participate actively in support of their interests.

B. THE DIVISION COMMITTED ERROR IN REOPENING THE RECORD FOR THE PURPOSE OF RECEIVING LATE TENDERED EVIDENCE SUBMITTED BY APPLICANT IN A MANNER WHICH DEPRIVES PROTESTANTS OF THEIR RIGHT TO CROSS-EXAMINE ON AND RESPOND TO SUCH EVIDENCE.

By its order of October 22, 1975, the Division would authorize reception into evidence, without opportunity for cross-examination or rebuttal, the following materials which were tendered by applicant as appendices to its exceptions to the initial decision of Judge Allard:

> (1) a report by the New York Department of Environmental Conservation concerning the improvement of a ferry slip in Greenport Harbor, (2) a permit to improve said slip, (3) a letter dated August 15, 1974, from the City Manager of New London indicating the city would enter into a contract with applicant for the use of the municipal pier as a docking facility, and (4) a copy of the lease between applicant and the City of New London;

The full measure of the prejudice that would be suffered by B & PJ and Cross-Sound if such materials were to be received into evidence without an opportunity to cross-examine on and respond to them can only be appreciated by reference to applicant's performance to date in the prosecution of its application.

From the very outset of this proceeding applicant has demonstrated an inability to present competent and probative evidence in support of its proposal. In his direct testimony applicant's operating witness did not have available for presentation to the Commission any evidence concerning a proposed plan of operation or financial and operating projections and related information from which the Commission could draw conclusions as to applicant's fitness. In order to make it possible for applicant to cure these fundamental defects in its presentation the presiding Judge allowed applicant to continue to present material with respect to its direct case throughout the course of hearings. Indeed, even after applicant rested its case and after protestants had made their presentations applicant was permitted under the guise of rebuttal to further patch up its direct case. Not completely satisfied with that extraordinary opportunity, applicant also took the liberty of improperly appending evidentiary documents to its brief without even seeking leave to have them received into evidence. Then, after the record had long since been closed, after briefs had been filed and considered, and after the trier of fact had rendered an initial decision applicant still sought even further opportunity to shore up its presentation by submission as appendices to its exceptions the materials which the Division would now accept into evidence.

What applicant obviously seeks to show by means of such documents is: (1) that the New York State Department of

Environmental Conservation has considered and ruled upon the negative environmental consequences of applicant's proposal which caused Judge Allard to deny the application (Appendices A and B to Applicant's Exceptions); and (2) that applicant has come up with a feasible alternative to the inherently dangerous proposal originally submitted for Commission approval (Appendices C and D).

What protestants would show if they had an opportunity to do so is that Appendices A and B have absolutely nothing to do with the traffic congestion and water pollution problems with which the Administrative Law Judge was concerned in the Initial Decision. Instead, they relate solely to a request for permission to dredge Greenport Harbor in front of applicant's proposed landing site. */ Thus, at best these two documents are essentially irrelevant to the issues now before the Division on exceptions and, at worst, they are misleading and highly prejudicial in the context in which they have been tendered.

Receipt into evidence of the documents submitted as Appendices C and D to applicant's exceptions would be equally unprejudicial. Significant in this regard is the fact that, until the close of the record, applicant vigorously defended the safety and operational feasibility to a landing plan at New London which would have automobiles and passengers departing from its vessels directly onto the main line of the Penn Central between New York and Boston over which Amtrak operates its high speed passenger trains. By cross-examination and submission of rebuttal evidence the absurdity of such a proposal was demonstrated even to the apparent satisfaction of applicant.

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*/ In this regard, it is perhaps significant to note that applicant has consistently asserted throughout these proceedings that no dredging would be necessary to accommodate its vessel.

Now, at a time when protestants have no opportunity to test their credibility, the Division would receive into the record documents submitted as purported evidence of a feasible alternative terminal site at New London. Protestants submit, however, that, given the opportunity, they could readily demonstrate that the new proposal is just as unrealistic as the old. In particular, they could show, among other things, that operation of such a large vessel in the confined waters of the Thames River would create serious navigation problems and that the city Pier could not safely accommodate the type of elaborate equipment necessary to permit loading and unloading of applicant's vessel.

These protestants submit that it would be particularly inappropriate to give applicant the benefit of the doubt with respect to these critical factors in view of its performance record to date. From the very inception of this proceeding right up to the filing of its last pleading applicant's presentation has consisted largely of seemingly endless assertions of the soundness of a particular feature of its proposal followed closely be a revision intended to cure the defect which it adamantly insisted did not exist. For this reason, protestants vigorously submit that receipt of any of the material tendered by applicant with its exceptions without affording the opportunity to test it under cross-examination and to rebut those facts which these protestants know to be inaccurate would be seriously out of consonance with the Commission's characteristic adherence to fundamental fairness in all of its proceedings.

C. THE DIVISION COMMITTED ERROR IN RECEIVING AS EVIDENCE OF RECORD IN THIS PROCEEDING UNVERIFIED DOCUMENTS FILED IN DOCKET NO. W-1270 (SUB 2 TA) IN A MANNER WHICH DEPRIVES PROTESTANTS OF THEIR RIGHT TO CROSS-EXAMINE ON AND TO RESPOND TO SUCH EVIDENCE

Receipt into evidence in this proceeding of the unverified documents submitted by Mascony as Appendices N and Q to applicant's petition for reconsideration in Docket No. W-1270 (Sub 2 TA) would be so clearly unfair to these protestants as to constitute a denial of fundamental due process.

The first such item which the Division would receive into evidence is an updated version of the anticipated traffic pattern for vehicles exiting from applicant's proposed Greenport terminal facility. In order to properly evaluate this latest version it is appropriate to take cognizance of the chameleonlike quality of applicant's traffic control plans. Throughout the presentation of its direct evidence, applicant's operating witness engaged in a continuing exercise in backing and filling as the basic flaws in its traffic plans were brought to its attention. Among the more significant defects were the fact that the proposed locations of parking and staging areas would be in violation of applicable zoning ordinances and the fact that feasibility of the route of egress from the ferry would be contingent upon the ability to move vehicles including large tractor-trailer units through a narrow and tortuously irregular alley at the rate of one vehicle every six seconds.

The protestants submit that in view of such past performance applicant's "new" plan deserves the careful scrutiny that is possible only when an opportunity for cross-examination is provided. If there were any doubt about this fact it is resolved by the observations made by East End Supply Co., in its reply to applicant's petition for reconsideration in Docket No. W-1270 (Sub 2 TA) pointing out that the most recent version of applicant's traffic patterns which it submitted as Appendix Q to its petition would have traffic following a path which is currently occupied by a two-story motel. Under such circumstances it would be fundamentally unfair to receive applicant's traffic plan into evidence without affording protestants an opportunity to cross-examine on and respond to such materials.

The second item tendered with applicant's petition for reconsideration in Docket No. W-1270 (Sub 2 TA) which the Division would summarily accept into evidence is an executed copy of an unexecuted lease agreement for a portion of the New London City Pier which applicant tendered as an appendix to its exceptions. Protestants submit that, without an opportunity to develop the record as to the unsuitability of that pier for the type of operation proposed by applicant, the lease agreement, whether executed or not, is simply of no probative value.

IV.

ALTERNATIVE REQUEST FOR REOPENING FOR FURTHER HEARING

These protestants submit that applicant has had every reasonable opportunity to present competent evidence in fulfilment of its statutory burden of proof. Applicant's continued efforts to patch up its case is perhaps the most compelling evidence that it recognizes that it has failed by a wide margin to sustain its burden. Now what the Division would propose to do is to allow receipt into evidence of materials which, if admissable at all, should have been tendered as part of applicant's direct case. Under such circumstances it would be totally improper and unfair to receive such materials at this point in the proceeding.

If, however, it should be determined that such materials are to be received in evidence protestants vigorously submit that the most fundamental requirements of due process require that the proceeding be reopened for further hearing in order that they might cross-examine on and respond to such materials with appropriate rebuttal evidence and in order that they might also be afforded the same opportunity as applicant to submit evidence of what the Division characterizes as "changed circumstances." Among the very significant "changed circumstances" as to which protestants would submit evidence are the following:

1. The sharp decline in cross-sound vehicular traffic that occurred immediately following the close of hearings due to the sharp increase in gasoline prices;

2. The greatly expanded year-round sailing schedule of Cross-Sound which has totally eliminated the long waits which had been experienced during summer weekends in past years;

3. The reservations system and other innovative service improvements that have been instituted by Cross-Sound;

4. The new high speed vessels to be built specifically for service between New London and Orient Point, the first of which is already under construction; and

5. The new terminal facilities to be constructed under a $300,000 grant from New York State.

Protestants submit that, if the Commission is to consider applicant's proposal on the basis of "changed circumstances", common sense and basic equity dictate that all changed circumstances be given consideration, including those enumerated above.

IV.

CONCLUSION AND PRAYER

By its order of October 22, 1975, the Division would erroneously overlook the continuing opposition by several parties of interest to applicant's proposal and would receive into evidence materials of highly questionable probative value in a manner which would deny protestants fundamental rights.

WHEREFORE, for all of the reasons set forth herein, B & PJ and Cross-Sound respectfully pray that an order be entered: (1) setting aside the Division's order of October 22, 1975, insofar as it contains erroneous findings with respect to the continuing interest in this proceeding by these and other protestants and recognizing the correct status of this case as one that is still vigorously opposed; and (2) setting aside the Division's order of October 22, 1975, insofar as it would authorize receipt into evidence of materials tendered by applicant with its exceptions to the initial decision in this proceeding and with its petition for reconsideration in Docket No. W-1270 (Sub 2 TA) or, alternatively, reopening the proceeding for further hearing in order that these protestants might have an opportunity to cross-examine on and respond to such materials and to otherwise introduce evidence reflecting significant "changed circumstances" in their own operations in order that the Commission might be able to base its decision in this proceeding on a record which accurately reflects all relevant features of the current situation.

Respectfully submitted,

BRIDGEPORT AND PORT JEFFERSON
STEAMBOAT CO.

CROSS-SOUND FERRY SERVICE, INC.

BY____________________________
Peter A. Greene
Their Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all parties of record by first-class mail, postage-prepaid, this 21st day of November, 1975.

Peter A. Greene

DOCUMENT 289

BEFORE THE

INTERSTATE COMMERCE COMMISSION

IN THE MATTER OF

MASCONY TRANSPORT AND FERRY SERVICE, INC.

DOCKET NO. W-1270

* * * * * * * * *

REPLY TO PETITION FOR RECONSIDERATION OF BRIDGEPORT AND PORT JEFFERSON STEAMBOAT CO. AND CROSS-SOUND FERRY SERVICES, INC.

* * * * * * * * *

Applicant's Representative:

Frank J. Weiner
Attorney at Law
15 Court Square
Boston, Massachusetts 02108

BEFORE THE
INTERSTATE COMMERCE COMMISSION
IN THE MATTER OF
MASCONY TRANSPORT AND FERRY SERVICE, INC.
DOCKET NO. W-1270

* * * * * * * * * *

REPLY TO PETITION FOR RECONSIDERATION
OF
BRIDGEPORT AND PORT JEFFERSON STEAMBOAT CO.
AND
CROSS-SOUND FERRY SERVICES, INC.

* * * * * * * * * *

I

Comes now Mascony Transport and Ferry Service, Inc., hereafter referred to as applicant, and files this reply to the petition for reconsideration and to reopen for receipt of additional evidence filed by Bridgeport and Port Jefferson Steamboat Co., hereafter referred to as B & PJ and Cross-Sound Ferry Services, Inc., hereafter referred to as Cross-Sound, and collectively, as protestants.

II

Applicant submits that the joint petition filed by B & PJ and Cross-Sound is duplicative of the joint reply to the exceptions filed by protestants and/or predecessors in the above-entitled proceeding. Applicant submits that there is no error of Division 1 in reopening this proceeding pursuant to its order of October 22, 1975.

Applicant submits that no useful purpose would be served for the cross-examination of certain materials tendered by applicant as Appendices to its exceptions to the initial decision of Administrative Law Judge David Allard.

The documents submitted by applicant in its exceptions, and as appendices to its exceptions, speak for themselves. It is extremely difficult to conceive of what protestants' cross-examination would yield and why protestants would want to cross-examine, for example, a report issued by the New York Department of Environmental Conservation concerning the improvement of a ferry slip in Greenport Harbor, among others. Are protestants actually seeking to cross-examine the Hearing Officer or Administrative Law Judge that wrote the initial decision ?

III

The petition filed by protestants in this proceeding is duplicative of their reply to applicant's exceptions and apparentl the Commission, Division 1, by reopening this proceeding pursuant to its order dated October 22, 1975 has considered protestant's prior reply, found it to be without merit, and hence reopened the proceeding.

IV

It is noteworthy that protestants are requesting the Commissi to allow protestant to submit additional evidence as stated in its petition, on page 15. Apparently, protestants have finally become aware of the fact that there is merit to applicant's proposal and applicant's exceptions, and thus protestants, in order to overcome their deficiencies as found in the initial decision, are seeking to inject at this late stage, corrections to their deficiencies.

Protestants again state that "high speed vessels" are to be built. This is a continuation of a 14-year promise that protestants and their predecessors have promised to the public. Cross-Sound further seems to admit that it is aware of the fact that its terminal facilities on Long Island, New York are inadequate, and continues to adopt the same position as its predecessor in that it is seeking funds from State of New York in order to provide such adequate facilities.

V

Throughout this proceeding, applicant has stated that investment for its proposed operations would be from private funds and no reliance would be made upon funds from any federal or state body.

VI

Protestants seem to overlook that this proceeding is already reopened, and an evaluation is being made in accordance with the National Environmental Act of 1969, 42 U.S.C. 4321 et seq. It is applicant's understanding that the Commission is evaluating the entire proposal on the basis of the National Environmental Policy Act as it is apparent that the denial of the application was predicated soley on the basis of the initial decision of the Administrative Law Judge to the effect that there was a safety problem at New London, Connecticut and an environmental problem at Greenport, Long Island.

VII

Under the circumstances applicant respectfully prays that the Commission deny the petition filed by protestants.

Respectfully submitted,

Frank J. Weiner

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of December, 1975, served a copy of the foregoing documents upon all parties of record in this proceeding, by mailing, by first class mail, postage prepaid, a copy thereof, properly addressed to each.

Frank J. Weiner

DOCUMENT 294

SERVICE DATE
FEB - 3 1976

INTERSTATE COMMERCE COMMISSION
Washington, D.C.

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC., INITIAL OPERATIONS -- NEW LONDON TO GREENPORT, L.I., N.Y.

JAN 27 1976

NOTICE TO THE PARTIES:

NOTE: The environmental procedures followed by the Commission in this case reflect the peculiar facts of this case and are not intended to establish any precedent.

On May 29, 1973, Mascony Transport and Ferry Service, Inc., filed an application seeking authority to operate as a common carrier by water, in self-propelled vessels, transporting passengers, and automobiles with passengers, tractors, trailers and trucks, loaded and empty, between the ports of New London, Conn., and Greenport, L.I., N.Y. Public hearings were held on the matter and an initial decision, served June 19, 1974, recommended that the application be denied. On October 22, 1975, the Commission ordered that the record in the proceeding be reopened and directed that an evaluation of the environmental effects of the proposed service be made in accordance with the National Environmental Policy Act of 1969.

During the pendency of this proceeding the Supreme Court rendered its opinion in *Aberdeen & Rockfish Railroad Co.* v. *Students Challenging Regulatory Agency Procedures (SCRAP)*, 422 U.S. 289 (1975). Also during the pendency of this proceeding the Commission on August 15, 1975, issued its proposed environmental rules in *Revised Guidelines for the Implementation of the National Environmental Policy Act of 1969*, 350 ICC 492. This proceeding, therefore, is a "bridge" case, and the environmental procedure followed herein represents only a practical accomodation of completed staff work and evolving environmental considerations.

Whether in fact the final rules will differ from the proposed rules cannot be determined at this time. That decision must await final Commission consideration of the rulemaking proceeding. Accordingly, procedural options available under the National Environmental Policy Act of 1969, as construed by *SCRAP II*, are at this time considered completely open and are not to be deemed bound by the handling of the subject proceeding.

Parties to the proceeding and other interested persons may comment on this draft impact statement by the submission of representations to the Interstate Commerce Commission, Washington, D.C. 20423, on or before March 22, 1976.

Five copies of this notice and attached draft environmental impact statement shall be served on the Council on Environmental Quality, and single copies of the notice and attached statement shall be served on appropriate Federal, State and local government agencies and on all parties to the proceeding. Additional copies are available upon request to the Interstate Commerce Commission, Washington, D.C. 20423.

ROBERT L. OSWALD,
Secretary

SUMMARY

(X) Draft ( ) Final Environmental Impact Statement

OFFICE OF PROCEEDINGS, INTERSTATE COMMERCE COMMISSION

1. Type of Action:

(X) Administrative ( ) Legislative

2. Description of Action:

Mascony Transport and Ferry Service, Inc., seeks authority to operate as a common carrier by water, in self-propelled vessels, transporting passengers and automobiles with passengers, tractors, trailers and trucks, loaded and empty, between the ports of New London, Conn., and Greenport, L.I., N.Y.

3. Summary of Environmental Impacts:

Accomplishment of this action will result in adding a substantial volume of traffic to the streets in downtown Greenport during times when traffic levels already exceed design level capacity. Potential safety hazards will be created as a result of increased traffic congestion in Greenport and the need for ferry-related traffic in New London to cross Penn Central mainline tracks to gain access to the landing site. Additional safety problems may be caused by introducing large ferry vessels into Greenport Harbor which accomodates a large number of small craft in the summer months. Approval of the application will probably have a beneficial impact on energy consumption as a result of diversion of automobile traffic from the highways, with fuel savings being projected to be as much as 600,000 gallons annually.

4. Alternatives Considered:

1. No action.
2. Alternative Sites:
   A. Greenport
   B. Other points on Long Island
3. Operational Changes.

5. Comments Have Been Requested From:

Federal

Council on Environmental Quality
Environmental Protection Agency, Regions I and II
Department of Transportation, Regions I and II
Department of Commerce
Department of the Interior
United States Coast Guard
United States Army Corps of Engineers
Federal Maritime Commission
Federal Power Commission
Energy Research and Development Administration
Federal Energy Administration
United States Railway Association

State

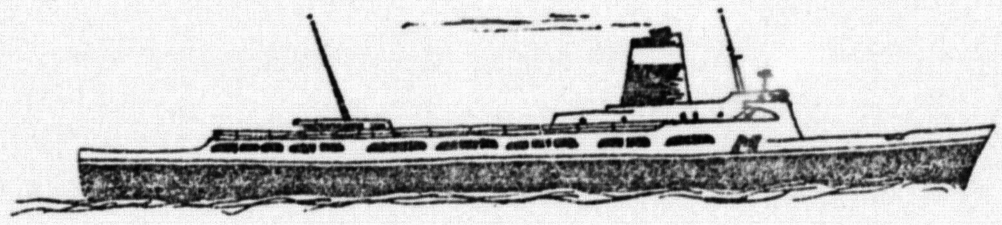
State of New York
New York State Department of Environmental Protection
New York State Department of Transportation
New York State Department of Parks and Recreation
State of Connecticut
Connecticut Department of Environmental Protection
Connecticut Department of Transportation
Connecticut Public Utilities Commission
Connecticut Department of Waterways
Connecticut Historical Commission

Local

Suffolk County Traffic Safety Department
City of New London
Village of Greenport
Tri-State Regional Planning Commission

Other parties to this proceeding.

6. Date made available to CEQ and public:



Draft
Environmental Impact Statement
Docket No. W-1270

Mascony Transport And Ferry Service, Inc., Initial Operations -- New London To Greenport, L. I., N.Y.

Office Of Proceedings
Interstate Commerce Commission

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DRAFT ENVIRONMENTAL IMPACT STATEMENT

No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC., INITIAL OPERATIONS -- NEW LONDON TO GREENPORT, L.I., N. Y.

I. DESCRIPTION OF ACTION

Mascony Transport and Ferry Service, Inc., of New Bedford, Mass., seeks authority to commence operations as a common carrier by water between the ports of New London, Conn., and Greenport, N.Y. The purpose of the application is to provide ferry service across Long Island Sound for passengers, with or without automobiles, and trucks carrying commercial traffic.

Applicant alleges that its proposed service will result in a substantial conservation of time and energy for potential ferry users inasmuch as its proposed all-water route of 21.5 miles is considerably less than the approximately 200-mile highway route between the involved points. Two existing ferries conduct operations across the Sound and oppose the application primarily on the ground that an additional service is not justified by the public convenience and necessity. Cross-Sound, Inc., (which recently obtained the operating rights of New London Freight Lines) transports passengers and vehicles between New London and Orient Point, N.Y., a site located 8 miles east of Greenport (see Figure 1). The Bridgeport and Port Jefferson Steamboat Co. (B&PJ) operates approximately 69 miles west of the site of the proposed operation, serving the ports of Bridgeport, Conn., and Port Jefferson, N.Y. Mascony alleges that existing service is incapable of meeting current demand, particularly during peak traffic periods.

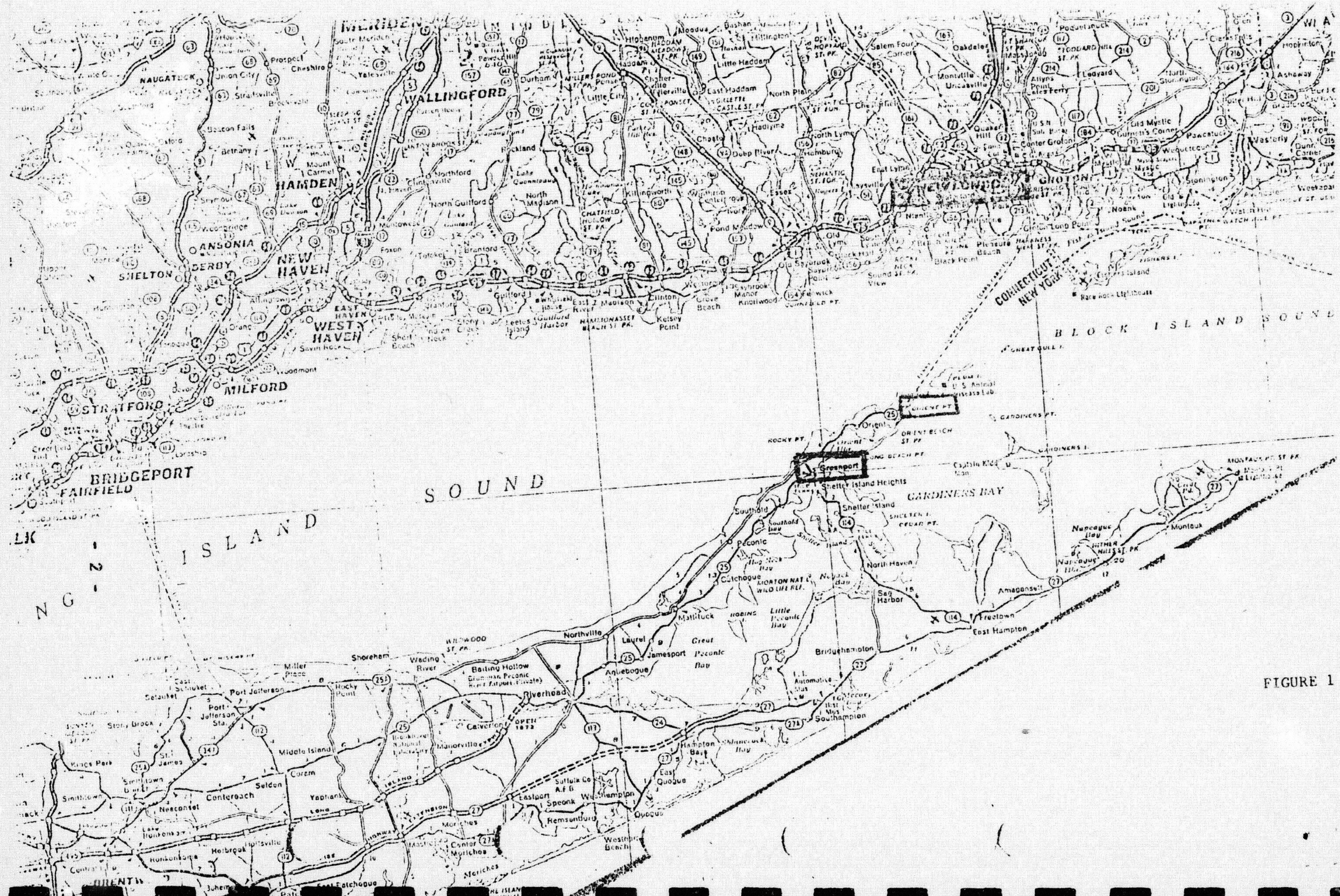
MERIDEN
WALLINGFORD
NAUGATUCK
HAMDEN
ANSONIA
DERBY
SHELTON
NEW HAVEN
EAST HAVEN
WEST HAVEN
MILFORD
STRATFORD
BRIDGEPORT
FAIRFIELD
Guilford
Madison
Clinton
Old Saybrook
Old Lyme
NEW LONDON
GROTON
Mystic
Stonington
Westerly
CONNECTICUT
NEW YORK
BLOCK ISLAND SOUND
Fishers Island
Race Rock Lighthouse
Great Gull I.
Plum I.
U.S. Animal Disease Lab
Orient Pt.
Orient
Orient Beach St. Pk.
Rocky Pt.
Greenport
Shelter Island Heights
Shelter Island
Gardiners Pt.
Gardiners I.
GARDINERS BAY
Southold
Peconic
Cutchogue
Mattituck
Laurel
Jamespot
Aquebogue
Riverhead
Northville
Great Peconic Bay
Little Peconic Bay
Noyack Bay
North Haven
Sag Harbor
Bridgehampton
Southampton
East Hampton
Amagansett
Napeague Bay
Montauk
Montauk Pt. St. Pk.
Hampton Bays
Shinnecock Bay
Quogue
Westhampton
Eastport
Speonk
Remsenburg
Center Moriches
Moriches
Manorville
Calverton
Yaphank
Middle Island
Coram
Selden
Centereach
Port Jefferson
Setauket
Stony Brook
Smithtown
St. James
Nesconset
Holbrook
Ronkonkoma
Patchogue
Miller Place
Rocky Point
Shoreham
Wading River
Baiting Hollow
Wildwood St. Pk.
SOUND
ISLAND
NG
LK

FIGURE 1

Procedural History

The application was filed on May 29, 1973, and hearings were held on the matter at New London on October 29, 30, and 31, and November 1, 1973; at Greenport on December 10, 11, 12, and 13, 1973, and January 8, 9, and 10, 1974; and at Washington, D.C., on February 20, 1974. The Administrative Law Judge, in an initial decision served June 19, 1974, concluded (1) that public demand for ferry service between New London and eastern Long Island exceeded the capacity of existing services for a good part of the year, (2) that although excess capacity during the late fall, winter, and early spring could well result in increased fares, inferior service, or both, the user public was willing to assume this risk, and (3) that the ability of applicant to provide the proposed service deserved further investigation in view of potential safety problems at New London and environmental difficulties at Greenport. The Administrative Law Judge accordingly recommended that the application be denied on the ground that the record was not sufficiently developed to permit adequate consideration of the environmental impact of the proposed action, particularly with respect to the Village of Greenport, and of the safety problems associated with the New London docking site. Mascony filed exceptions to the initial decision along with a petition to reopen the record for receipt of additional evidence.[1]

By order served October 22, 1975, the Commission, Division 1, reopened the record for receipt of tendered additional evidence[2] and reopened the proceeding for further consideration in light thereof. The order of October 22, 1975, also directed that an evaluation of the environmental effects of the proposed service be made in accordance with the National Environmental Policy Act of 1969 (NEPA) prior to any further decision on the merits of the proceeding. The Environmental Staff has prepared this draft environmental impact statement in response to that directive.

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[1] It should be noted that Mascony filed applications to conduct the proposed service under temporary authority both prior and subsequent to the initial decision in this proceeding. These applications, which incorporated certain changes in applicant's operating proposal, were denied by the Commission's Motor Carrier Board by orders dated May 29, 1974, and May 22, 1975, respectively.

[2] Specifically, said tendered evidence included a New York Permit to improve the Greenport ferry slip, an agreement whereby applicant would utilize the New London municipal pier as a docking facility, and an amended operations plan for the Greenport docking site.

It is important to note here that this statement is not intended to be the decisional document in the instant proceeding. The discussion herein will be limited to describing applicant's operating proposal and analyzing its environmental impacts. Therefore, it is not the appropriate forum in which to resolve such issues as the existence of a public need for the proposed ferry operation and the effect of an additional service on existing water carriers. These and other questions pertinent to a determination of whether the proposed service is required by the present or future public convenience and necessity will be ultimately dealt with in the Commission's subsequent decision on the merits.

Applicant's Operating Proposal

Mascony has purchased four vessels from the Delaware River & Bay Authority (DRBA): the S.S. New Jersey (subsequently renamed the S.S. Greenport), the S.S. Cape May, the S.S. Delaware, and the M.V. Cape Henlopen. These vessels were used by the DRBA to provide ferry service across the Delaware River between Cape May and Lewes, Del., until dredging problems prompted the Authority to seek vessels with shallower drafts.

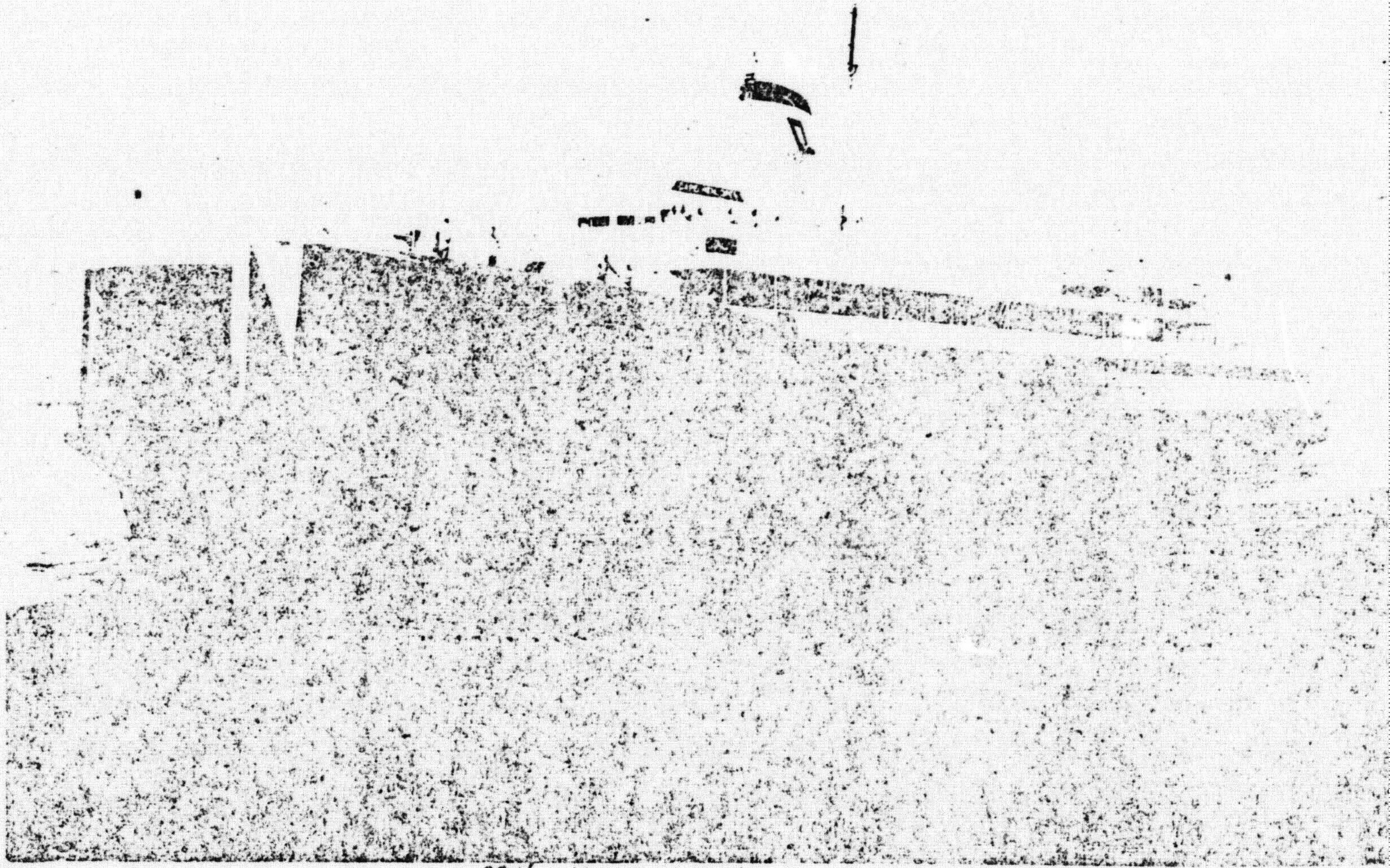
Applicant proposes to utilize the Cape Henlopen and the Greenport for its proposed operation with the Cape May available as a back-up vessel in the event one of its primary vessels is put out of service. The Cape Henlopen (see Figure 2) is a diesel-burning vessel approximately 320 feet long and 50 feet broad, with a draft of 3 feet forward and 10 feet at stern. Built in 1944, it was refurbished in 1955 and completely rebuilt in 1960. The Cape Henlopen has a passenger capacity of 600 and can carry a maximum of 85 standard-sized automobiles, or a mixed load of 60 automobiles and 5 tractor-trailers, on its six-lane automobile deck. It offers passengers such amenities as a snack bar, observation decks, rest room facilities, and passenger lounges. Holding tank facilities will be installed to prevent the release of sewage into the Sound. Operating with a crew of 12, the Cape Henlopen will utilize 120 gallons of fuel per hour at a speed of 14 knots.

The Greenport (see Figure 3) has an overall length of 350 feet, a breadth of 59 feet, and a 10' 6" draft. The vessel, which was constructed in 1936, lengthened and modernized in 1954, and refurbished in 1964, has a licensed passenger capacity of 800 persons. It can carry a maximum of 100 automobiles and a mixed load of 85 cars and tractor-trailers. The Greenport contains passenger amenities similar to the Cape Henlopen's and holding facilities will be installed before operations commence. A steam-powered vessel, the Greenport burns approximately 360 gallons of fuel per hour at a speed of 15 knots. Capable of loading from either the bow or stern (as are all of Mascony's vessels), the ship will operate with a crew of 14. Mascony will spend a total of $100,000 on renovating the Greenport, the bulk of the improvements being cosmetic in nature.

Mascony's back-up vessel, the Cape May, has the same vessel statistics, carrying capacity, and fuel consumption rate as the Greenport. The Cape May, a steam-powered vessel, was constructed in 1933, moder-

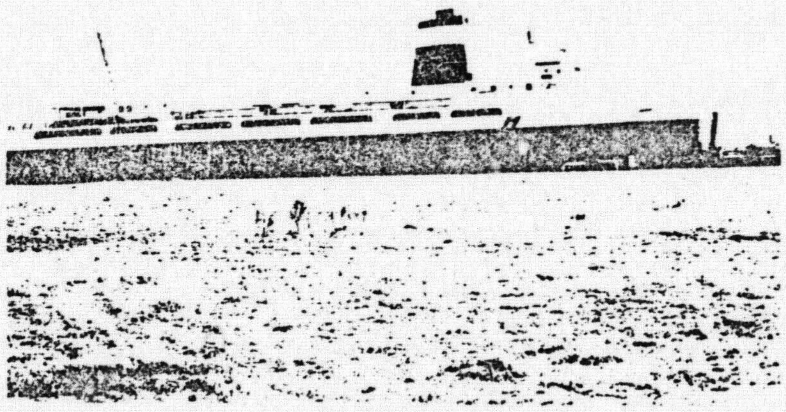
MV HENLOPEN

FIGURE 2



MV HENLOPEN

FIGURE 3



the pier which is basically sound. The only structure to be added to the pier would be a camel (a large log) tied to the north end of the dock. Mascony proposes to stage 65 passenger vehicles on the pier itself (40 feet of the pier's 50-foot width is available for such a purpose) and an additional 20 automobiles adjacent to the pier. Tractor-trailer units and excess automobiles would be staged adjacent to Mascony's Bank and Sparyard docking site and would be directed to the municipal pier via local streets just before boarding time. Mascony will construct a non-permanent 45-foot ramp for loading and unloading of vehicles. Pedestrians will board by way of a walkway protected by pipe rail. Tickets will be sold upon boarding.

Ample facilities for overnight parking exist for those passengers desiring to leave their automobiles in New London. A municipal parking garage with space for 550 cars is located a short distance away from the municipal pier and additional parking facilities are available at the Bank and Sparyard site.

The bulk of the traffic embarking from New London is expected to enter the city by way of Interstate 95, approximately 1 mile north of the municipal pier, and will thus generally avoid entering the heart of the Central Business District. Access to the municipal pier will be by way of State Street across the Penn Central tracks. State Street is a one-way thoroughfare with two traffic lanes and one parking lane. A fail-safe signaling device 4/ is located at the railroad private grade crossing which also provides access to the adjacent Fishers Island ferry dock.

4/ Such a device, hooked up to the circuity of the track, obstructs access to the track whenever an approaching train comes within a specified distance of the grade crossing it protects.

nized in 1954, and refurbished in 1964. A new topside superstructure costing $1 million was added by the DRBA in 1970. Mascony does not plan to use its largest vessel, the S.S. Delaware, in service between New London and Greenport. The Delaware is 375 feet long and has the capacity to carry between 115 and 120 automobiles.

Mascony initially proposed to utilize docking facilities in New London located directly east of the Penn Central main line railroad tracks in the vicinity of the intersection of Bank and Sparyard Streets (see Figure 4). As a result of objections expressed by the Connecticut Department of Transportation pertaining to the lack of safety devices over the track, and the probable creation of a public grade crossing across the Penn Central tracks in contravention of Connecticut and Federal law, applicant subsequently amended its operating proposal and leased space at New London's municipal pier, located at the foot of State Street approximately 1,500 feet north of its original site (see Figure 4). However, Mascony intends to transact operations at the Bank and Sparyard Street location as soon as the operational difficulties regarding this site can be resolved to the satisfaction of the Connecticut DOT and Public Utilities Commission. In view of this fact, this environmental study will include a discussion of both sites.[3]

The New London municipal pier is located directly east of the Penn Central tracks, opposite the Amtrak passenger station. The pier, which extends 350 feet into New London Harbor and is 50 feet wide, was damaged by a tugboat collision several years ago and is unsafe for docking at its end. However, Mascony's vessels would dock at the north side of

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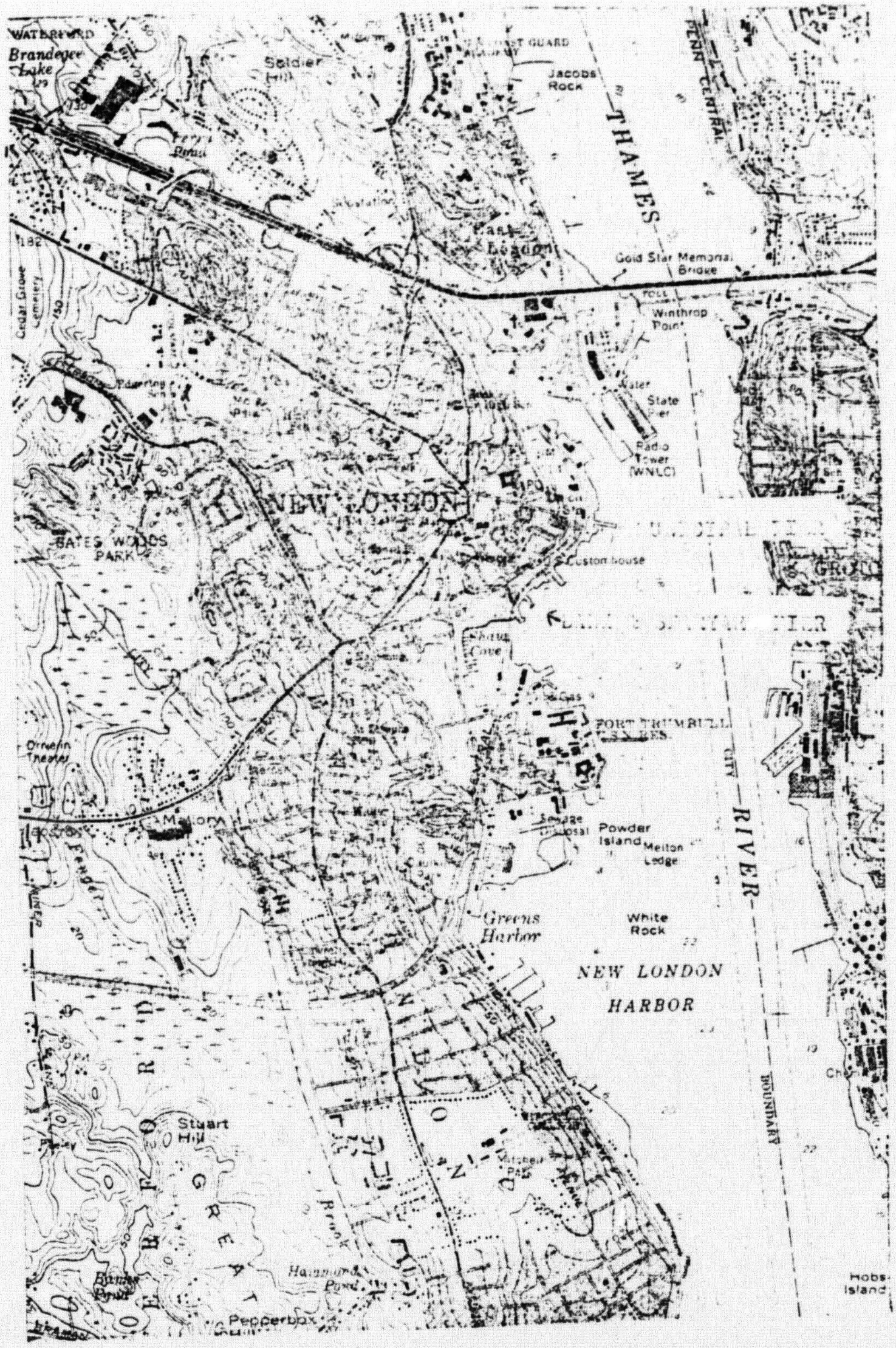
[3] Under the Interstate Commerce Act, a water carrier can shift and otherwise change its docking facilities within the confines of a port without additional Commission authority. Consequently, there is a need to discuss alternative sites and operations.

FIGURE 4


WATERFORD
Brandegee Lake
Soldier Hill
COAST GUARD
Jacobs Rock
THAMES
PENN CENTRAL
East New London
Gold Star Memorial Bridge
TOLL
Winthrop Point
Water
State Pier
Radio Tower (WNLC)
Cedar Grove Cemetery
NEW LONDON
BATES WOODS PARK
Custom house
Shaw Cove
FORT TRUMBULL
Powder Island
Melton Ledge
Greens Harbor
White Rock
NEW LONDON HARBOR
RIVER
CITY BOUNDARY
Mallory
Stuart Hill
Hammond Pond
Pepperbox Hill
Brook
GREAT
Hobs Island

Mascony's original site near Bank and Sparyard Streets has the potential for parking and staging 213 vehicles. Mascony holds an option to purchase this 20,000 square foot parcel which now accommodates a number of small buildings. Utilization of the site as a ferry terminal would require demolition of these buildings and hardtopping of the area. Mascony would also have to install a grade crossing across the Penn Central tracks with a fail-safe signal to satisfy the Connecticut Department of Transportation and the State Public Utilities Commission. Mascony has applied to the State Public Utilities Commission for a permit to construct a grade crossing at the site but its application was denied without prejudice in view of the denial of the application in the instant proceeding and the failure of Mascony to obtain a permit from the State Department of Environmental Protection and the United States Army Corps of Engineers for the construction of dolphins in New London harbor and the installation of a new bulkhead.5/ If approval for a public grade crossing should ultimately be granted,6/ applicant will install a fail-safe crossing signal and station attendants along the tracks to direct traffic safely across. The rail right-

---

5/ Mascony's initial application to the Department of Environmental Protection proposed placing dolphins at the tip of the pier. This proposal was denied without prejudice on the ground that the ferry would extend into the secondary channel during loading and unloading and thus interfere with the navigation of the secondary channel by commercial and pleasure craft. The Memorandum of Decision suggested that Mascony amend its plan, which it has done. However, applicant has yet to submit a new application in view of the uncertain status of the instant operating rights application.

6/ Under 23 U.S.C. § 322(a) (amended 1975), the Secretary of Transportation may allow certain private grade crossings to continue operating provided they are equipped with the best available protection. Pursuant to Chapter 279 of the Connecticut General Statutes, the approval of the State Public Utilities Commission is required to change the use of and widen and install automatic protection at private grade crossings.

of-way would be fenced off. Mascony plans to install dolphins adjacent to the stone jetty pier, install and maintain a sheet steel piling bulkhead to make the existing dock more uniform for use, and fill the area behind the new bulkhead with 1,915 yards of clean bank gravel.[7]

Mascony proposes to stage vehicles west of the railroad tracks and direct them across the tracks directly onto the ferry, which they will board by means of a non-permanent 45-foot ramp. The major approach to the docking site would be by way of Bank Street, now a two-way thoroughfare with one parking lane and one traffic lane in each direction. Vehicles would make either a right or left turn from Bank directly onto the Mascony docking site. An alternate means of access to Mascony's property would entail making a left turn from Sparyard Street.

Applicant's mooring facility at Greenport extends approximately 350 feet into Greenport Harbor. The width of the proposed ferry slip ranges between 70 and 100 feet. Fourteen dolphins will be installed in the slip to accommodate vessels during docking and Mascony has been issued Tidal Wetlands and Stream Protection Permits and Water Quality Certification by the New York State Department of Environmental Conservation pertaining to said dolphin installation. However, it has not yet received approval from the U.S. Army Corps of Engineers for the project inasmuch as Corps action on Mascony's application has been suspended until a final decision on the instant operating authority application is issued. In view of the fact that the adjacent water level is a minimum of 11.5 feet deep at mean low tide,[8] dredging will not be necessary.

---

[7] Such improvements would be contingent on the approval of the State Department of Environmental Conservation and the Army Corps of Engineers.

[8] Report by Donald F. Carson, Hearing Officer, State of New York Department of Environmental Conservation, in Tidal Wetlands Application No. TW-15277-0053.

Mascony's docking and terminal facility is located south of Front Street, between First and Third Streets. Applicant originally planned to dock 50 feet further west but potential interference with the Shelter Island Ferry which docks a short distance west prompted it to amend its operating proposal. Mascony owns two 11,000-square foot parcels at the corners of Front and Third Streets (see Point A, Figure 5), and Third and Wiggins Streets (Point B), and a 20,000-foot parcel known as the Bohack Property (Point C) abutting the Greenport Playhouse on Front Street. In addition, Mascony asserts it can renew its expired option to purchase a 20,000 foot parcel on Third Street north of Wiggins (Point D) if additional space is needed for parking or staging. Applicant formerly leased and now owns a large parcel extending from Front Street to its pier (Point E) to be used for staging purposes. It also holds an 18-foot right-of-way behind Mitchell's Restaurant from this area to First Street to be used for exiting from the landing area.

In addition to installing dolphins, Mascony will remove a dogleg extending from the end of the pier. Although no other structural improvements to the ferry slip are planned, a potential erosion problem exists with respect to Mascony's staging area which may eventually necessitate construction of new bulkheads.

In view of the fact that most potential ferry users are likely to be oriented from areas west of Greenport, the major access to the ferry slip will be by way of New York State Route 25, an east-west cross-Island highway which becomes Front Street in the vicinity of the ferry landing site. To gain access to the ferry, eastbound traffic will make a right-turn off Front Street onto a 55-foot alleyway between the Post Office and Mitchell's restaurant (an unused banquet hall will be partially

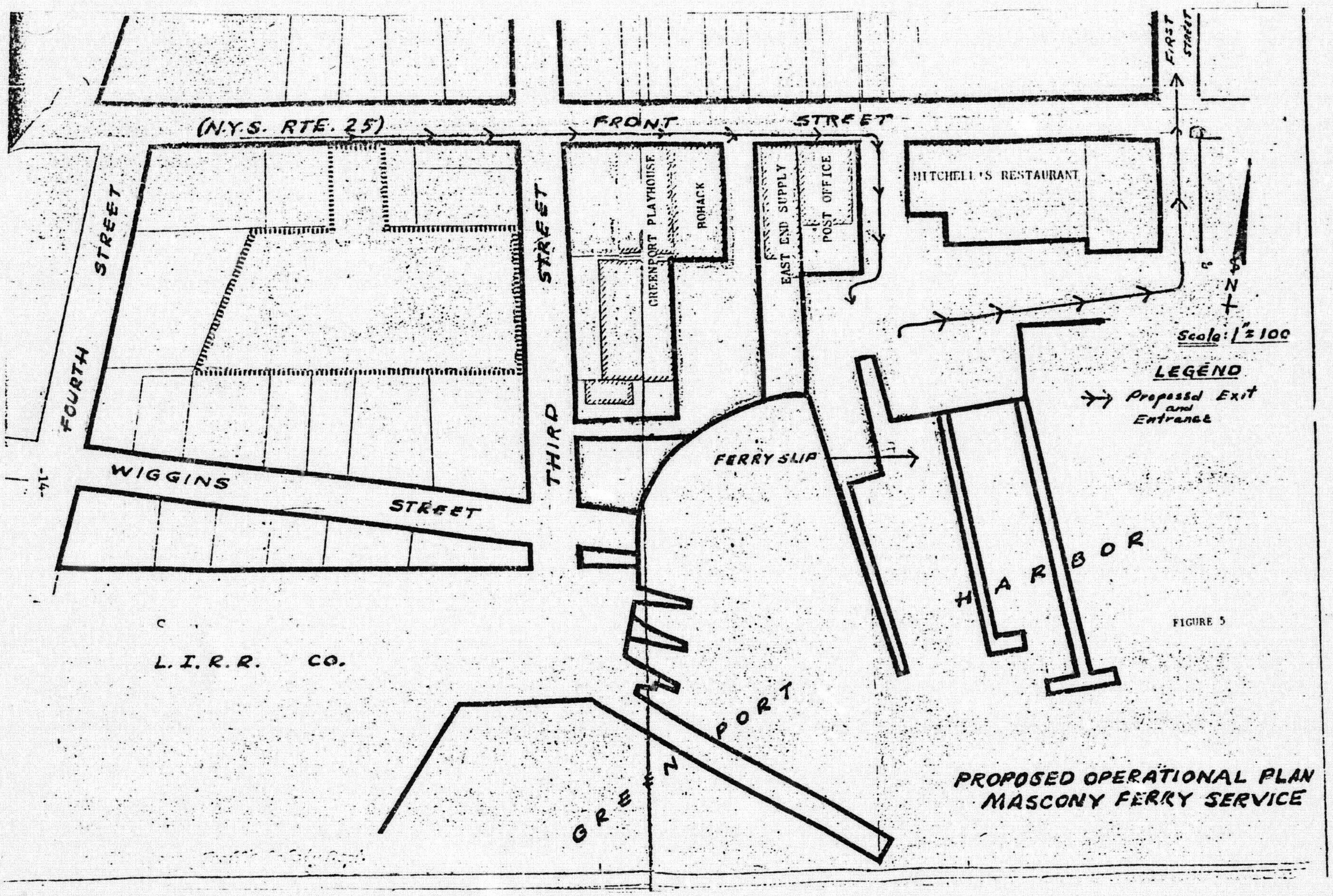

(N.Y.S. RTE. 25)
FRONT STREET
FIRST STREET
FOURTH STREET
THIRD STREET
WIGGINS STREET
GREENPORT PLAYHOUSE
ROHACK
EAST END SUPPLY
POST OFFICE
MITCHELL'S RESTAURANT
FERRY SLIP
HARBOR
GREENPORT
L.I.R.R. CO.
N
Scale: 1" = 100
LEGEND
Proposed Exit and Entrance

FIGURE 5

PROPOSED OPERATIONAL PLAN
MASCONY FERRY SERVICE

demolished to create the access corridor). Vehicles will then move directly into the main staging area prior to boarding the ferry. Traffic staged on one of Mascony's other properties would have to move north on Third Street to Front Street and then along Front Street to gain access to the 55-foot alleyway into the docking area since a lack of right-of-way over property owned by the East End Supply Company prevents access along the waterfront. Ferry traffic disembarking in Greenport would be routed in two directions. Initially, applicant proposed to direct all traffic onto Front Street through the 55-foot alley but then amended its proposal to provide for the use of First Street as an exit route. However, allegations by Village representatives to the effect that First Street's 72-year old sewer pipes, which are laid only a few feet below the road surface, could not withstand the weight of the heavy tractor trailers which the proposed ferry service would generate induced Mascony to further amend its operational proposal. Applicant now proposes to direct all commercial traffic to Front Street with passenger vehicles being divided between Front and First. Vehicles exiting through First Street would not be permitted to turn onto Front, being directed across that thoroughfare by attendants stationed at the intersection of First and Front. Traffic routed through First Street would move north to County Road 27 which serves as a bypass to State Route 25.

Mascony asserts it will be able to stage 100 vehicles in the area adjacent to the ferry slip, 50 vehicles each on its Front and Third and Wiggins and Third properties, and 100 vehicles on the Bohack property. Overnight parking facilities would be available at Mascony's Third Street properties. Loading and unloading of vehicles would be accomplished by means of a 40-foot ramp extending from the bow of the ship. Passengers would board by means of a gangway extending from the side of the vessel.

Mascony proposes to operate all year-around, the number of daily trips to depend upon the particular season of the year. It will utilize one vessel, the Cape Henlopen, the entire year, supplementing it with the Greenport during the 66-day summer peak period. The proposed schedule is listed below:

January 1st to April 29th

LV. NEW LONDON	ARR. GREENPORT	LV. GREENPORT	ARR. NEW LONDON
8:00 A.M.	9:30 A.M.	10:00 A.M.	11:30 A.M.
6:00 P.M.	7:30 P.M.		

(The 8:00 A.M. departure would alternate between Greenport and New London every other day).

April 30th to July 29th

LV. NEW LONDON	ARR. GREENPORT	LV. GREENPORT	ARR. NEW LONDON
8:00 A.M.	9:30 A.M.	10:00 A.M.	11:30 A.M.
6:00 P.M.	7:30 P.M.	8:00 P.M.	9:30 P.M.

July 30th to October 3rd

LV. NEW LONDON	ARR. GREENPORT	LV. GREENPORT	ARR. NEW LONDON
6:00 A.M.	7:30 A.M.	6:00 A.M.	7:30 A.M.
8:15 A.M.	9:45 A.M.	8:15 A.M.	9:45 A.M.
4:00 P.M.	5:30 P.M.	11:15 A.M.	12:45 P.M.
7:15 P.M.	8:45 P.M.	7:15 P.M.	8:45 P.M.

October 4th to December 31st

Same schedule as January 1st to April 29th.

It should be noted that Mascony may expand its schedule to four round-trips daily during June or July if demand warrants.

Applicant projects that it will be operating at 30 percent of capacity from January 1 to April 29, 40 percent of capacity from April 30 to July 29, 60 percent of capacity during the July 30 to October 3 peak season, and 35 percent of capacity the rest of the year. Mascony estimates that it will book 66,385 vehicle spaces (95 percent passenger and

5 percent commercial vehicles) and carry 300,000 passengers annually. Applicant arrived at this figure by averaging New London Freight Lines ridership during the first and last three weeks of operation in 1972 and taking into consideration the high number of turnaways observed during peak season.[9/] Based on a survey of riders in the Connecticut DOT preliminary report, it is anticipated that the ferry will be used primarily for social or recreational purposes and on an irregular basis. Mascony's projected traffic mix of 95 percent passenger and 5 percent commercial vehicles is also based on the past experience of its putative competitor. However, Mascony anticipates a large volume of seed potato traffic (approximately 800 tractor-trailer units) moving between Long Island and New England during February and March, a time during which passenger use will be at its lowest.

In contrast to Mascony's proposal, Cross-Sound's existing service is characterized by smaller vessels making more frequent sailings. Cross-Sound operates five vessels, the M/Vs Orient, Plum Island, Manisee, Manitou, and Caribbean Ferry, with vehicle carrying capacities ranging between 12 and 24. Between one and three vessels are in service simultaneously, depending upon the time of year. Cross Sound's 1975 schedule is divided into three segments. During its Spring and Fall schedule (May 2 through June 12 and September 22 through November 2), Cross Sound sails seven times daily from both New London and Orient Point. Its Summer schedule (June 13 through September 21) lists 11 departures from each port. Finally, Cross Sound's Winter schedule (March 21 through May 1 and November 3 through March 20) is characterized by three depar-

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9/ The Connecticut Department of Transportation, Bureau of Planning and Research recorded 150 vehicles turned away on August 16 and 124 turned away on August 18, 1972, in a preliminary report analyzing the Orient Point ferry.

tures from each port on weekdays and four daily departures on weekends. Cross Sound did not previously transport truck traffic during the winter and has begun to do so only in its latest schedule. Ferry service for trucks, however, is dependent on the availability of the tw[illegible]rger vessels, the Orient and Plum Island.

B & PJ transports passengers and vehicles on the M/V Martha's Vineyard, a 202-foot long vessel with a 50 foot beam. The Martha's Vineyard has a 33-vehicle and 1061-passenger capacity and runs from May 25 to October 14, making between three and five round-trips daily depending upon the season and day of the week.

From March 22, 1975, the date Cross-Sound commenced operating the Orient Point ferry, to November 30, 1975, it has carried 62,549 vehicles and 120,174 passengers between Orient Point and New London. Based on volume capacities supplied by protestant, this traffic is equivalent to 15 percent of passenger and 70 percent of vehicle capacities for scheduled runs (See Table 1). Unlike its predecessor New London Freight Lines, Cross-Sound accepts reservations.

II. RELATIONSHIP TO LAND USE PLANS, POLICIES, AND CONTROLS

A. Greenport

The Village of Greenport is part of the town of Southold which comprises the major portion of the north fork of eastern Long Island, bounded by Long Island Sound on the north and Peconic and Gardiner's Bays on the south. The area is predominantly agricultural, the primary crop being potatoes, with generally uniform topography of gentle to moderate slope. In addition to its extensive farmland, the most important physical feature of the Township is its many miles of waterfront. Greenport is located on the south shore of Southold and has one of the three deep

TABLE I

CROSS-SOUND FERRY SERVICE, INC.

1975 CAPACITY AND TRAFFIC STATISTICS

Month		Capacity	Traffic Handled
March*	Passengers:	14,920	2,038
	Vehicles:	1,580**	907**
April	Passengers:	44,760	4,705
	Vehicles:	4,740	2,541
May	Passengers:	57,892	9,542
	Vehicles:	9,758	5,576
June	Passengers:	117,600	15,254
	Vehicles:	13,056	8,303
July	Passengers:	163,680	27,482
	Vehicles:	15,872	12,640
August	Passengers:	163,680	32,686
	Vehicles:	15,872	14,553
September	Passengers:	127,800	12,718
	Vehicles:	13,632	9,047
October	Passengers:	58,280	9,794
	Vehicles:	9,920	5,974
November	Passengers:	45,536	5,955
	Vehicles:	5,064	3,008

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*Operations commenced March 22, 1975, under temporary authority pending approval of transfer of operating authority from previous owners to Cross-Sound Ferry Service, Inc.

**Vehicle capacity is measured in terms of conventional passenger vehicles. In calculating traffic handled conventional passenger vehicles are each counted as one vehicle and trucks are counted as three vehicles each since 55' tractor trailer combination occupies three passenger vehicle spaces. Since many of the trucks handled were actually less than full size tractor trailers the figures shown for vehicle traffic handled are somewhat overstated.

Source: Cross-Sound Ferry Service, Inc.

water ports on Long Island outside of New York City. The dredged channel has a depth of 40 feet. Because of its harbor, Greenport has become a prominent fishing village (the major catch being shellfish) and the site of fish packing and canning industires as well as a popular port of call for pleasure craft. The predominant form of land use in the Village is the single family residence which accounts for over 25 percent of the Village's developed land. While some two-family and multi-unit buildings do exist in the village, the majority of residences are large, old structures on relatively large plots of land. Commercial activity is concentrated along Front Street between Third and Main Streets and Main Street between Front and the waterfront. Most commercial activity is devoted to retail and marine-related businesses with less than 2 percent of the village being subjected to industrial and heavy commercial use. Most of this commercially-devoted acreage is concentrated along the waterfront and the Long Island Railroad tracks. According to the Village Comprehensive Development Plan, only 4 percent of the Village's gross land area (approximately 20 acres) is available for development.[10/]

Although the population of Suffolk County has skyrocketed during the past 20 years, and that of Southold has increased moderately, the population of Greenport has declined by 18 percent, from 3,082 in 1950 to 2,481 in 1970. There are proportionately more persons in the 45 years or older age group residing in the Village than in the County as a whole, the average age of Village residents being approximately 38 years.[11/] The indications are, therefore, that in addition to its re-

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[10/] Data for this paragraph was obtained from the Comprehensive Development Plan, Town of Southold, Village of Greenport, part I.

[11/] Source: 1970 census data.

sort town character Greenport is viewed by some as a desirable retirement community.

Suffolk County has been designated a depressed area eligible for full financial assistance by the United States Department of Commerce, Economic Development Administration. In addition, the Village of Greenport has been labeled a depressed area by the County because of its higher unemployment rates, lack of new municipal facilities, and lower family income.[12/] Village planners assert, however, that conditions have improved in recent years as increased tourism has invigorated the Village's economy. The Village Comprehensive Development Plan seeks to take advantage of Greenport's natural features and build upon its success as a summer resort. The plan recommends promotion of maximum use of the Village's waterfront facilities and development of a diversity of water-oriented activities. A pedestrian mall which would be closed to vehicular traffic is recommended for Adams Street, a block north of Front Street. The plan recognizes the adverse affect of on-street parking on Front Street upon efficient vehicular flows and proposes adding approximately 300 public off-street parking spaces, as well as widening key thoroughfares. The plan proposes to enhance the waterfront area by constructing landscaped pedestrian walkways leading onto the waterfront and filling in boat slips for recreational use. The Village has approved plans for a marine museum to be constructed on the eastern side of town. If built, such a facility is expected to attract a substantial number of tourists. However, funding for the project is speculative. The 4 to 5 acre facility will require $5 million to construct, with funding to be dependent on the availability of State

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12/ 1970 median family income for Greenport was $8,664, compared to $9,949 for the Town of Southold and $12,084 for Suffolk County. Source: 1970 census and Suffolk County Planning Commission.

or County monies. If the museum is built, the Village Planning Board proposes to divert museum traffic from the center of town by directing such traffic to parking areas on the edge of town and busing tourists to the museum from the parking lots. Current tourist attractions in the Village include an Oyster Festival one day each year in October and a 1-day art show during the summer season. An in-the-water boat show which would run for two weeks is in the planning stages.

Existing land use for the area directly adjacent to the ferry is zoned waterfront commercial. The Shelter Island ferry, which transports passengers between Greenport and Shelter Island in 85-foot long and 30-foot wide vessels, docks approximately 300 feet to the west. The area adjacent to the proposed Mascony site on the east is devoted to marina use and houses small fishing and pleasure craft (see Figure 5).

Although the proposed ferry service would bring a large number of tourists into town from the New England area, members of the Greenport Planning Board assert that the ferry would be inconsistent with the Comprehensive Development Plan and would seriously alter the character of the Village. They allege that traffic generated by the ferry will clog village streets to such an extent that residents of nearby villages and regular summer tourists will avoid coming into Greenport. It is further alleged that unlike the regular tourist trade, ferry travelers will perceive Greenport solely as a connection between New York and New England and, consequently, will not patronize village business establishments. Mascony's utilization of its present site, while consistent with the area's present zoning classification of waterfront commercial, would be inconsistent with Greenport's plan to develop its waterfront area for recreational uses or as a location for off-street parking for village shops. It is contended, therefore, that the ferry will hinder rather than promote the Village's development as a resort town.

Members of the Village Planning Board indicate that alternative docking sites would be less disruptive to the Village's development plans to the extent they avoid placing ferry traffic in the heart of the Village commercial district. The only alternative site to be given serious consideration thus far is the south side of the Long Island Railroad pier located approximately 500 feet west of Mascony's present location (see Figure 5).

Greenport is the easternmost terminus of the Long Island Railroad. During the 19th and early 20th centuries, the railroad operated a car ferry service transporting both passengers and rail freight from this pier to New England. The service was abandoned in 1930 and the pier has remained unutilized since that time. The railroad owns approximately 100,000 square feet of property, including a passenger depot and the land underlying the tracks. Current railroad service to Greenport is infrequent with only two passenger trains entering and leaving the station each day. Use of the southern part of the pier would not only eliminate certain navigational problems associated with Mascony's currently proposed site but would also alleviate much of the traffic problem which would arise from diverting ferry traffic directly into the center of town. Staging for the ferry could take place on the unused railroad property itself or on the nearby Mascony properties. While there would be some disruption to residential uses adjacent to the traffic approach to the railroad site, the impact on the town in general would be substantially less severe. The railroad has no objection to leasing its property for ferry purposes providing that its right to future use of the property can be preserved. It should also be noted that the pier is in poor condition and the potential staging area is severely eroded. Use of the pier for ferry purposes, therefore, would entail substantial rehabilitation.

Other potential alternative docking sites exist in the extreme eastern part of the village, north of the commercial district. These sites, also zoned waterfront commercial, are located adjacent to residential areas. Utilization of these sites would result in less congestion than in the downtown area but would entail potentially more interference with residential use. It is not known whether sufficient land would be available in these areas for staging and parking purposes.

B. New London

New London, a city of 31,360 persons, is situated in southern New England, roughly midway between New York City and Boston. The city is located on the Thames River which flows into Long Island Sound from the north. New London is a shipbuilding and manufacturing center whose major products include pharmaceuticals, printing presses, engines, paper products, and furniture. Because of its harbor, one of the deepest on the Atlantic Coast, New London developed as a whaling and sealing port in the 19th century. The city's extensive waterfront is still considered to be its most valuable natural asset and houses three other ferry services besides the one proposed by Mascony - the Orient Point, Fisher's Island, and Block Island ferries. New London is the site of the United States Coast Guard Academy as well as several national historic sites.

The municipal pier at the foot of State Street is part of a planned multi-modal transportation terminal to accommodate interchange between automobile, rail, bus, ferry service and taxi linked to air commuter service at the City's Trumbull Airport. The City has developed a 550-car municipal parking garage to support such development and has proposed several improvement projects designed to facilitate coordination between the various transport modes. It has applied to the State Department of Transportation for financial assistance in implementing these plans. Proposed projects include the development of a bus terminal adjacent to the municipal garage, construction of a pedestrian bridge to connect the garage to the train platform and, eventually, to the various ferry landings, and in the long term, development of physical links to the ferry services, removal of Penn Central spur tracks, and overall development of the waterfront. Thus, location of the proposed ferry service at the municipal pier would be consistent with city plans in the area.

Mascony's primary site at Bank and Sparyard Streets is located within the Shaw's Cove area, a district scheduled for urban renewal. Plans call for rehabilitation or demolition of buildings and widening of streets in the area surrounding Mascony's property. Bank Street, the major artery carrying traffic to and from the proposed service, would be widened and converted to a one-way thoroughfare northbound. Eugene O'Neill Drive, a major connector between Interstate 95 and the waterfront, will be extended to connect with Tilley Street at a point one block west of Bank Street in the vicinity of the proposed terminal and will be converted into a one-way thoroughfare southbound. Blighted waterfront property will be reclaimed in an effort to reestablish the area for pedestrian and marina use. At the present time much of the area around the waterfront has been left to deteriorate and is unsuitable for recreational purposes. Institution of the proposed service in the Shaw's Cove area is expected to assist in the area's rejuvenation.

III. ENVIRONMENTAL IMPACTS

A. Traffic Congestion

The proposed service will result in increased vehicular traffic in both of the involved localities, creating possible traffic flow problems. Applicant's Bank and Sparyard site in New London is in the midst of the Shaw's Cove urban renewal area where the local highway system is being improved. As a result of redevelopment, an alternate one-way north-south street system with 36 feet of cross section in each direction will be available between the proposed ferry landing and Interstate 95. This arrangement will increase highway capacity to such a level that the traffic likely to be generated by Mascony would be insignificant in comparison to such increased capacity. The initial configuration of Bank Street and O'Neill Drive, the most likely access and egress routes to the ferry site, is contemplated to be two 12-foot travel lanes and one 12-foot parking lane. Estimated urban intersection approach service volumes for one way streets with parking on one side approximate 2,400 vehicles per hour green for this highway configuration.[13/] When the growth of traffic warrants, the street configuration will be changed to three 12-foot travel lanes. Table 6.5 of the Highway Capacity Manual estimates approach service volumes for such a configuration to be 3,200 vehicles per hour green. Both of the volumes mentioned assume Level of Service D (traffic approaching unstable flow), and additionally assume 10 percent left turns, 10 percent right turns and 5 percent trucks and through buses. Since the streets under consideration are the major arterials in the area, it can be assumed that they

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[13/] Highway Capacity Manual, HRB 87, Highway Research Board (1965), figure 6.6. "Vehicles per hour green" indicates the number of vehicles which move through an intersection for each hour the traffic signal is green in a given direction. Thus, if the signal is green half of the time in each direction, the number of vehicles crossing the intersection in each direction would be measured over a 2-hour period.

would have priority in the signalization pattern. With 75 percent green time for these two major highways, the resultant approximate capacities would be 1,800 vehicles per hour in the two through lane configuration and 2,400 vehicles per hour with three through lanes. It should be pointed out that these values are for comparison purposes only to approximate the volume of the proposed street configurations.

The final design of the street system, particularly within the area of the proposed ferry operation, is incomplete. Such undecided design elements as the final transition curve from Bank Street to the station with related questions of property acquisition and the possibility of a pedestrian bridge over the highway to the municipal parking lot, could result in variations in street widths and the final highway capacity in this area. The final decision on the matters is expected in the summer of 1976. The capacities discussed above, however, should be accurate estimations of the actual capacities which can be accommodated on these streets. Inasmuch as the capacity of the Greenport is 100 automobiles and that of the Cape Henlopen 85, a capacity ferry load discharged into the traffic stream would comprise approximately 4 percent of the three through lane highway capacity. Current traffic figures for the involved area indicate that existing volumes do not approach capacity. Peak hour volumes for northbound traffic on Bank Street at its intersection with Tilley range between 329 (A.M.) and 521 (P.M.) vehicles per hour while southbound volumes range between 514 (A.M.) and 525 (P.M.) vehicles.[14] Additional peak hour volumes in the area are:

	A.M.	P.M.
Bank Street (left turn on Tilley)	69	60
Bank Street (right turn on Tilley)	19	36
Tilley Street (left turn on Bank)	23	55
Tilley Street (right turn on Bank)	57	111

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[14] Source: New London Redevelopment Agency.

However, in view of the significant changes to traffic circulation patterns and the adjoining land use which will result from urban renewal, such figures are not reliable indicators of post-renewal traffic levels. Bank Street will become a one-way thoroughfare northbound, precluding its use as an access route for southbound travelers coming off of Interstate 95. Access to the ferry from I-95 will be by way of O'Neill Drive southbound into Tilley Street eastbound and across Bank Street to the landing site.

A greater potential for traffic congestion exists at the municipal pier site. The Orient Point ferry, now located a half-mile south of Mascony's Bank and Sparyard landing site, plans to relocate a short distance north of the municipal pier, adjacent to the Block Island Ferry landing site. This concentration of ferry services in an area which will also contain a bus and railroad terminal may result in traffic tie-ups during the summer peak. Traffic may also back up on State Street if vehicles seeking to enter the staging area are blocked by train arrivals and departures. However, major traffic congestion is not anticipated and delays associated with off-loading traffic during this time are not expected to be intolerable. Current peak hour traffic volumes for State Street in the vicinity of the railroad tracks range between 414 (A.M.) and 534 (P.M.) vehicles per hour, below the road's capacity. It should also be noted that potential traffic problems pertaining to the municipal pier location will be temporary in nature because of the interim status of the site.

Conditions in Greenport, on the other hand, present potentially serious traffic problems in the event Mascony operates from its proposed site between First and Third Streets. While there is a lack of specific data necessary to perform a detailed analysis of the traffic impact of the proposed service upon Greenport, certain qualitative evaluations can be made and are the subject of the following discussion.

In view of the fact that access to the ferry slip from Third Street is blocked by the lack of an easement across the property of the East End Supply Company, Front Street eastbound traffic must use the 55-foot alley between the Post Office and Mitchell's Restaurant to reach the primary ferry staging area. This alleyway is of sufficient width to accommodate the turning radii of the vehicles using it. While there may be sufficient storage space in the primary staging area for most sailings, passengers wishing to leave their cars behind would most likely park at one of Mascony's Third Street parcels.

Much of the traffic landing in Greenport will exit by way of First Street proceeding north. Such traffic would then use the combinations of North Street and Moores Lane or North Street and Main Street to reach County Route 27, an east-west oriented road north of the village. All commercial and the remaining automobile traffic will be routed out through the 55-foot alleyway, with the bulk of these vehicles making left turns onto Front Street westbound.

Front Street in the vicinity of the proposed ferry landing site carries two-way traffic with two parking lanes in 33 feet of cross section. While no definitive breakdown of this cross section was available, photographs indicate each of the two travel lanes to be approximately 9.5 feet wide and the parking lanes 7 feet wide. First and Third Streets are both approximately 50 feet wide and accommodate two-way traffic with two travel and two parking lanes.

Calculation of the actual volume capacity on Front Street is difficult since narrow lanes, two-way traffic, parking, and frequent turns are all physical or operational factors which detract from optimum capacity.[15] However, NYS Route 25, from NYS Route 114 to Main Street, has been assigned a design hour level of 330 vehicles by the Traffic Section of the New York State Department of Transportation, Region 10 Planning and Development Division.[16] Although more vehicles can be accommodated at lower levels of service, such levels result in lower operating speeds, traffic stoppages, and other congestion-related problems, including accidents. A Traffic Study for the Village of Greenport performed by the Suffolk County Traffic Safety Department in October 1974 shows traffic volumes on Front Street during August reaching levels of between 330 and 400 vehicles per hour. The Study describes traffic conditions at this time as congested and such levels may reflect an approximation of the ultimate capacity of Front Street. These high levels of traffic contribute to the occurrence of the majority of traffic accidents in the village on Front Street at the intersections with Main, First, Third, and Fifth Streets,[17] in the area of Mascony's proposed ferry landing.

The traffic counts taken by Suffolk County in its study are purported to be typical of summer weekends and are alleged not to be significantly different from summer weekdays. These counts show a midday peak with the design hour volume being exceeded between 10:30 A.M. and 6:00 P.M. The traffic problems in Greenport are most prevalent in the summer months, with off-season levels approximating half of those reached in the summer peak season. The major problem areas are located east of Third Street in the business district, with traffic flow problems diminishing west of this intersection.[18/]

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[15] See *Highway Capacity Manual*, *supra*.

[16] This corresponds to estimates of the capacity of Front Street "with a decent level of service" made by the Suffolk County Traffic Safety Department.

[17] Comprehensive Development Plan for the Town of Southold, Village of Greenport, Part I, following p. 49.

During periods of peak ferry demand, it is likely that a significant portion of Front Street eastbound traffic would consist of vehicles destined to the ferry site. At Mascony's projected average of 60 percent capacity during the peak season an average of between 50 and 60 vehicles would be destined for the ferry staging area with numerous other vehicles moving toward the passenger only parking areas. Through adequate signing many of the latter could be diverted off of Front Street at Fourth and by way of Wiggins to the parking area at Third and Wiggins.

A 60 percent capacity load on the Greenport would consist of 60 vehicles or 18 percent of the design hour volume eastbound on Front Street. However, for a highway situation similar to Front Street, the number of right turns which must be made into the 55-foot alleyway will have the effect of reducing the highway capacity. If capacity at service level D is assumed to be 330 vehicles on Front Street, this reduction for 60 vehicles would be by an estimated 8 percent (i.e. 330 to 304).[19/] For those times when the Greenport is operating at full capacity, the capacity of Front Street would be reduced by an estimated 15 percent, to 280. The 100 vehicles would then represent approximately 36 percent of the road's capacity.[20/]

Traffic exiting from the ferry onto First Street would reach volumes

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[18/] Source: Suffolk County Traffic Safety Department.

[19/] Source: *Highway Capacity Manual*, *supra*, Table 6.4.

[20/] Although Mascony has expressed a willingness, in conversations with Environmental Staff members, to limit trips to 50 percent of capacity in peak season, such a proposal does not appear to be feasible. Not only would such a plan alienate customers, but it would fail to alleviate traffic congestion caused by cars destined to the ferry landing. In fact, there may be an even more adverse impact if these cars are turned back onto Front Street instead of boarding the ferry.

similar to traffic approaching on Front Street and would have to compete with Front Street traffic at a non-signalized intersection (although Mascony has indicated that it will station attendants at this intersection). The use of the 55-foot alleyway by exiting traffic making a left turn onto Front Street westbound would result in stoppage of both lanes of traffic on the street during any period of heavy traffic flow.

In view of the fact that Wiggins is one way eastbound, cars parked in one of the Third Street parcels must exit by way of Third Street, entering the traffic stream with vehicles using the Shelter Island Ferry. In addition, the traffic on Third would be competing with the traffic on Front Street at their signalized intersection.

Table 2 shows the proposed summer schedule of Mascony with corresponding traffic volumes at the Third Street - Front Street intersection for a "typical" summer weekend. It should be noted that should Commission approval be granted for the proposed service, the Commission will have no control over its scheduling.

Two ferry events, the 11:15 A.M. departure and the 5:30 P.M. arrival, appear to present potentially the most serious traffic problems for Greenport with two other events posing additional difficulties. At the time of the 11:15 departure, Front Street traffic moving eastbound already exceeds the design hour volume during the summer months. In view of the fact that this departure may generate greater than average demand because it is the only one scheduled during midday, 100 or more vehicles could be injected into an already congested traffic stream as a result of the ferry. This increase in volume would be accompanied by a concomitant decrease in highway capacity due to the large number of right turns onto the 55-foot alleyway. This situation should create severe congestion problems.

TABLE 2

Mascony Proposed Schedule		Hourly Volumes			
		Front Street		Third Street	
Ferry Leaves	Ferry Arrives	Eastbound	Westbound	Northbound	Southbound
6:00 A.M.	-----------	30	17	10	5
--------	7:30 A.M.	150	90	30	13
8:15 A.M.	-----------	206	128	40	20
--------	9:45 A.M.	295	210	80	60
11:15 A.M.	-----------	360	270	110	85
--------	5:30 P.M.	320	360	135	60
7:15 P.M.	----------	270	270	115	45
--------	6:45 P.M.	245	250	112	40

Source: Traffic Study, Village of Greenport, Suffolk County Traffic Safety Department (1974)

At the time of the 5:30 ferry arrival, Front Street traffic approaches or exceeds levels indicative of congestion in both directions. The extent of existing traffic levels severely limits the ability of a substantial number of vehicles, particularly trucks, to execute left turns from the 55-foot alleyway onto Front Street westbound. Most traffic leaving the ferry staging area would consequently have to either make right turns onto Front Street from the alleyway or exit by way of First Street. The former alternative would add to existing congestion problems on Front Street as would the latter since First Street traffic will be competing with Front Street traffic at a non-signalized intersection. The use of attendants by Mascony to direct traffic across the First-Front intersection will result in traffic stoppages along Front Street. Alternatively there would be serious problems in dispersing the ferry patrons.

It should be pointed out that demand already often exceeds the capacity of Front Street. At such times ferry traffic would have to compete with existing attractions. Therefore all those seeking to use the ferry or seeking to reach other attractions may not be accommodated by the existing street system, resulting in potentially adverse effects to both due to decreased accessibility.

The 9:45 A.M. arrival and the 7:15 P.M. departure present additional problems. The traffic on Front Street at these hours is heavy. In view of the fact that some vehicles can be expected to arrive early for the 11:15 A.M. and 7:15 P.M. departures, the ferry will be generating both arrival and departure traffic within an hour and a half of each other in one case and an hour and 45 minutes in the other. At times of peak ferry occupancy, this could have the serious cumulative effect adding approximately 180 vehicles during these time frames to the already congested downtown area.

It is possible that some portion of the traffic intended for the ferry would enter town by way of County Route 27 to Main Street and move south to Front Street. Access to the ferry landing site would then be by way of left turns onto First Street or into the alleyway while access to the parking areas would be by way of left turns onto Third Street. The increased number of left turns would tend to add to the traffic congestion of westbound Front Street. Another factor to consider is that in times of over-demand (more than 100 vehicles attempting to use the ferry for the same crossing), vehicles approaching the access alleyway to the staging area after this area has reached capacity will stop or slow down, further impeding the flow of traffic.

During the off-season, traffic volumes in downtown Greenport are considerably lower. The above-mentioned adverse impacts of the proposed ferry service on local traffic conditions will, consequently, substantially diminish although concentrated surges of traffic from ferry traffic may cause momentary delays.

Other traffic related considerations involve the physical condition of the streets themselves. The village has its own water and sewer systems with installation of sewer pipes on First Street dating back to 1903. The sewer pipes, constructed of vitrified clay with cement joists, are less than 3 feet from the road surface in areas of First Street near Front. There is some concern that heavy truck traffic over the Village's macadam streets, particularly First Street, could result in excess subsurface loads and vibration which may cause the sewer pipes to rupture.[21/] Rupture of these pipes would result in the discharge

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[21/] Source: Letter from Holzmacher, McLendon & Murrel, P.C./Consulting Engineers to Mayor of Greenport, dated April 21, 1975.

of untreated sanitary sewage into the surrounding area with the possibility of overflow to the street surface. This risk has been reduced to some extent by Mascony's proposal to divert commercial traffic away from First Street when leaving the staging area.

It should be noted that the above discussion is based on the capacities of the involved streets in their present configuration. The Comprehensive Development Plan recommends widening and realigning certai streets in the downtown area and restricting on-street parking on Front Street in order to improve downtown traffic flows. In addition, a traffic study conducted by the Automobile Club of New York at the request of the Village in 1961 recommends institution of a one-way traffic system in the downtown area. An example of how traffic flow could be improved would be to divide Front Street into two 11-foot travel lanes and an 11-foot parking lane which would serve as a turning lane near intersections. In view of Greenport's expressed interest in attracting tourist and vacationer-related activity into the Village, some improvements in downtown traffic flow would appear to be necessary. The Village Planning Board is in the process of preparing a traffic flow study which will be presented to the Village Board of Trustees for approval in the early part of 1976. The study is expected to recommend implementation of traffic flow improvements along the lines of those proposed in the Village's Comprehensive Development Plan. To the extent that techniques are employed to increase the capacity of streets in the downtown area, the adverse impacts on traffic congestion associated with the ferry would be mitigated.

The institution of the proposed ferry service will have the beneficial impact of easing traffic congestion in the New York City to New London corridor. However, in view of the high daily traffic volumes in this region, particularly in the New York City area, the amount of traffic diverted to the ferry will only have a minor effect on existing conditions.

B. Energy

The proposed service probably will have a beneficial impact on fuel conservation inasmuch as tractor trailers and passenger vehicles using the ferry should save more fuel than Mascony's vessels will utilize in performing the service. Mascony's primary vessel, the Cape Henlopen, consumes 120 gallons of diesel fuel per hour at cruising speed. Fuel consumption during idling is approximately 45 gallons per hour. Therefore, each round trip will utilize approximately 405 gallons of fuel (figuring 3 hours cruising time and 1 hour idling during unloading and loading). The Cape Henlopen's engines will be shut down when not in use and restarted one-half hour before departure. Under Mascony's plan of operation, the Cape Henlopen will be making 626 roundtrips annually. These trips will consume approximately 253,530 gallons of fuel. Taking into consideration an estimated 182 hours of start-up time unrelated to loading, an additional 8,212 gallons of fuel will be consumed. The Greenport, a steam-powered vessel, consumes 360 gallons of diesel fuel per hour during cruising and 70 gallons per hour during idling.[22] Based on consumption of 1,150 gallons of fuel per round trip (for 132 round trips a year), the Greenport will utilize 151,800 gallons during actual operations. As with the Cape Henlopen, the Greenport's boilers will shut down overnight or when not otherwise in operation. The boilers would have to be fired 1 1/2 hours before starting to build sufficient pressure. This will result in consumption of an additional 4,600 gallons, making a total of 170,260 for the year. The two vessels combined, therefore, will consume approximately 432,000 gallons of fuel annually, assuming they remain in service. If the backup vessel Cape May is put into service to replace the Greenport, fuel consumption will remain essentially unchanged. If it replaces the Cape Henlopen, however, fuel consumption will increase.

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[22] Although testimony adduced at the hearing indicated that the Greenport consumed 120 gallons per idling hour, this figure was based on firing both generators during idling instead of one as Mascony has proposed.

Quantification of the amount of fuel which would be saved by diverting vehicles from the highways to the ferry is difficult. The first problem encountered in making such a calculation is the lack of certainty regarding the origin and destination of potential ferry patrons. The 1972 survey conducted by the Connecticut Department of Transportation demonstrates the dispersion of origin and destination points in the New England region. Although 95 percent of the vehicles boarding the Orient Point ferry at Orient Point in June 1972 originated their trips in New York, only 37 percent of those boarding in New London showed Connecticut origins. Thirty-nine percent of such vehicles originated in Massachusetts, 13 percent in Rhode Island, and approximately 9 percent from other points outside New York. The destinations of those disembarking in New London were similarly dispersed, with 36 percent of the traffic destined to points in Massachusetts, 31 percent moving to points in Connecticut, 12 percent bound for Rhode Island and 15 percent destined to points in other states. On the other hand, 93 percent of the vehicles boarding in New London had destinations in New York.

Another factor complicating the quantification of vehicle fuel consumption in the absence of the ferry is the sporadic nature of ferry riding habits. Unlike a commuter train or bus service, the bulk of the involved ferry trips are expected to be for social or recreational purposes with the vast majority of customers riding the ferry less frequently than once a month. Regular ridership patterns will, therefore, be extremely difficult to ascertain.

Even if 200 miles, the highway distance between Greenport and New London, is arbitrarily assumed to be the length of the average trip for potential ferry users, actual fuel savings resulting from riding the ferry still cannot be calculated with any assurance. If there was no existing ferry service across the Sound and all potential Mascony users would otherwise have made the trip over the highways, it is obvious that substantial fuel savings would result from the availability of the ferry. Taking Mascony's projection of 66,385 spaces sold annually (which, based on an estimated ratio of 19 car spaces to 1 truck space, would amount to 63,066 automobiles and 3,319 commercial vehicles) annual fuel consumption without the ferry service would be approximately 1.03 million gallons.[23/] Therefore, the total fuel conserved by diverting Mascony's projected vehicle traffic from the highways would be approximately 600,000 gallons annually. However, actual conditions impair the utility of this figure. In actuality, Mascony will attract many vehicles that would otherwise have utilized existing ferry service, as well as other vehicles which may not have made the trip at all under existing conditions. To the extent that traffic is diverted from the Orient Point ferry to Mascony, fuel savings will be very minimal, with vehicles originating or destined to western Long Island or the New York City area

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[23/] This figure is based on Environmental Protection Agency average fuel consumption figures of 14 miles per gallon for passenger automobiles and 5 miles per gallon for commercial vehicles.

saving only the amount of fuel needed to travel the 8 miles between Greenport and Orient Point. Furthermore, the ferry may create an additional demand for itself, attracting passengers who may not have even made the trip without the services of an additional ferry available. To this extent, institution of the proposed service may stimulate vehicle trips and the resultant fuel consumption. On the other hand, the availability of the ferry may encourage potential travelers to leave their automobiles behind and ride the ferry as passengers. Thus, although the proposed service is likely to have a beneficial impact on energy consumption, it cannot be conclusively deemed significant, particularly in view of the total fuel consumed in the New York/New England area annually.[24]

C. Air Quality.

In view of lack of heavy industry and predominantly agricultural land use, air quality for the town of Southold is excellent.[25] Suspended particulate and sulfur levels are low, the only potential problem being with settlable particulates such as blowing sand. While the inauguration of the proposed ferry service would lead to an increase in carbon monoxide, sulfur dioxide, hydrocarbons, and nitrogen oxide levels in Greenport and its vicinity due to the rise in vehicular traffic, the impact on air quality is not expected to be significant.

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[24] Over 6.2 billion gallons of motor fuel were consumed for highway purposes in New York State in 1973. In Massachusetts, Connecticut and Rhode Island, the three New England States from which ferry traffic is most likely to be drawn, total highway motor fuel consumption exceeded 4.2 billion gallons in 1973. Source: United States Department of Transportation, Federal Highway Administration, Highway Statistics, 1973. The projected fuel savings attributable to the ferry, even if the liberal figure of 600,000 gallons is assumed, would represent less than one-hundredth of one percent of this total.

[25] Source: New York State Department of Environmental Conservation, Air Resources Division.

In New London, levels of particulates, sulfur oxides, carbon monoxide, and nitrogen oxides are all less than national standards. There is a problem in Connecticut with photochemical oxidants, however, attributable largely to hydrocarbons which are emitted by automobiles. The standard of .08 parts per million (ppm) was exceeded during 30 percent of the days between May and September 1975 inclusive, reaching maximums of as much as 25 ppm in nearby Groton.[26/] High hydrocarbon levels are dependent largely on the number of vehicle miles traveled in the State and are primarily an area-wide rather than local problem due to the broad dispersion of hydrocarbons throughout the ozone layer. Therefore, by reducing the number of vehicle miles traveled on State highways the ferry would have a slight beneficial impact on photochemical oxidant levels. To the extent the ferry generates traffic which would not otherwise be using the highways, it will contribute to the problem.

Emissions from the ferry engines should not present a problem. Emission factors for oil-burning steam and diesel electric engines for inboard vessels are presented in Table 3. In view of the limited number of ferry trips per day, the impact on air quality both over the Sound and in the involved ports will not be significant. Ferry emissions while crossing the Sound should be easily dispersed.

Finally, by providing a water route between New England and Long Island, the ferry will eliminate the need for many vehicles to traverse the congested New York City area in order to reach their ultimate des-

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26/ Source: Connecticut Department of Environmental Protection, Air Compliance Unit.

TABLE 3

EMISSION FACTORS FOR INBOARD VESSELS
EMISSION FACTOR RATING: D

Pollutant	Steamships[a]				Motorships[b]			
	Underway		In-berth		Underway		In-berth	
	lb/mi	kg/km	lb/day	kg/day	lb/mi	kg/km	lb/day	kg/day
Particulate	0.4	0.098	15	6.8	2	0.49	[illegible]	7.5
Sulfur dioxide[c]	7S	1.71S	300S	136S	(SO_x) 1.5	0.37	[illegible]	19.5
Sulfur trioxide[c]	0.1S	0.02S	4S	1.8S	—	—	—	—
Carbon monoxide	0.002	0.0005	0.08	0.036	1.2	0.29	46	20.8
Hydrocarbons	0.2	0.05	9	4.1	0.9	0.22	33	14.9
Nitrogen oxides (NO_2)	4.6	1.13	200	90.7	1.4	0.34	50	22.7
Aldehydes (HCHO)	0.04	0.01	2	0.9	0.07	0.017	2.6	1.2

[a] Based on fuel consumption data and emission factors for fuel oil.

[b] Based on fuel consumption data and emission factors for diesel fuel.

[c] S=weight percent sulfur in fuel; assumed to be 0.5 percent for diesel.

Source: Environmental Protection Agency, *Compilation of Air Pollutant Emission Factors*, April 1973.

tinations. While this will be beneficial to air quality in the region, the quantitative impact will be extremely minimal in view of the high existing levels of pollutants and the minute percentage of total area traffic which stands to be diverted.

D. Water Quality

The main threats which the ferry will pose to water quality involve possible discharges of sanitary wastes, oil, litter, bilge and wash water, and the possibility of thermal pollution.

Mascony will install holding tanks in its vessels and pump the waste discharge either into its own self-contained tanks equipped with a filter system or directly into the municipal sewer system at New London. After the waste passes through Mascony's tanks it would only be pumped back into the New London harbor if the discharge was of acceptable quality. Otherwise, the discharge will be pumped into the sewer system. Mascony will use fresh water as a flushing medium and plans to utilize approximately 3 gallons per passenger. The largest strain on the New London Sewage Treatment Plant will be during the summer peak when Mascony anticipates attracting 150,000 passengers, one-half of its total annual volume. At this time the discharge into the New London sewer system would be approximately 1,700 gallons per round trip or 6,800 gallons each day. Such an amount should not prove to be unduly burdensome on the New London treatment facilities.

As with sanitary wastes, the litter problem will be a function of ridership and thus is expected to be most serious in the summer. Inasmuch as the snack bars on Mascony's vessels will be indoors and are equipped with sitdown eating facilities, litter in the Sound and Harbors should not be significant.

Under the Federal Water Pollution Act and the Water Quality Improvement Act it is illegal to discharge oil from any vessel into or upon the navigable waters of the United States. Federal pollution control regulations require a holding tank with sufficient capacity to contain fuel wastes and a piping system to pump such wastes to a shoreside facility or discharge point. Mascony's holding tanks will be of sufficient capacity to contain such wastes and a pumping system will be put into operation.

Accidental oil spills are a possibility with any ferry operation. Inasmuch as Mascony is applying for an initial operating certificate, there is no indication of how effective its spillage control procedures will be. However, if it is assumed that Mascony will use ordinarily prudent care in avoiding fuel spillages, the threat to water quality should be minimal. There should be no thermal pollution problems with Mascony's steam-powered vessels since its engines would be water-cooled and surrounding water temperatures would not be significantly raised.

Although there may be temporary increases in turbidity due to installation of dolphins and bulkheads and backfilling in Mascony's ferry slips, the impact will be only minor and short term. The Connecticut Department of Environmental Protection has certified that Mascony's proposed New London improvements (as originally set forth with dolphins extending into the secondary channel) will not permanently violate Connecticut's water quality standards. Mascony's revised plan will have a similar non-adverse impact. The New York State Department of Environmental Conservation has issued Mascony a Tidal Wetlands Permit, Steam Protection Permit and Water Quality Certification based on its revised operating proposal in Greenport. It was found in the Department's report granting the above permits and certification that the underwater lands to be disturbed by pile driving operations for dolphin installation will be entirely beneath tidal waters and that no wetland vegetation or marsh areas will be endangered. Roiling of the water during installation will only be temporary and in the immediate vicinity of the dolphins. The State Department of Environmental Conservation has further concluded that the Greenport project will not cause unnecessary damage to the State's waters.

E. Historic

There are numerous historic sites in New London listed in the National Register of Historic Places (see Table 4). Of these sites, only the Customhouse and the Railroad Station are located in the immediate area of Mascony's two proposed ferry landing sites. The Railroad Station, located at the foot of State Street directly opposite the municipal pier, was constructed in 1887 and has been attributed to the noted American architect Henry Hobson Richardson.[27] Present plans call for the Romanesque Revival structure to be converted into commercial space and a restaurant with Amtrak continuing to utilize space for passenger operations. Use of the municipal pier for the proposed service will not block access to the station, there being sufficient space to stage and store vehicular traffic, and existing streets should adequately handle the extra volume. The inclusion of the Mascony ferry in the multi-modal transportation terminal planned for the New London waterfront will enhance tourist access to this historic site as will the planned rejuvenation of the waterfront in general. In conjunction with these plans, certain renovations to the station building and the immediate area are already being undertaken. The Customhouse, constructed in 1833 by the notable architect Robert Mills, is located in the Shaw's

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27/ Source: United States Department of Interior, National Park Service, Historic Railroad Stations (1974).

TABLE 4

NEW LONDON HISTORIC SITES

Site	Location
Nathaniel Hempstead House (Old Huguenot House)	Corner of Jay, Hempstead, Colt, and Truman Streets
Deshon-Allyn House	613 Williams Street
Joshua Hempstead House	11 Hempstead Street
Monte Cristo Cottage (Eugene O'Neill House)	325 Pequot Avenue
New London County Courthouse (State Courthouse)	70 Huntington Street
New London Customhouse	150 Bank Street
New London Public Library	63 Huntington Street
Shaw Mansion	11 Blinman Street
Whale Oil Row	105-119 Huntington Street
Fort Trumball	Fort Neck
New London Railroad Station	Foot of State Street
Thames Shipyard	West bank of Thames River, north of Coast Guard Academy
Williams Memorial Building Institution*	110 Broad Street

* Eligible Site

Source: National Register of Historic Places

Cove area on Bank Street. Renovation of the area will show this site off to better advantage as blighted buildings are torn down or rehabilitated and Bank Street is widened. Institution of the proposed service will increase tourist access to the site from the water. Although Bank Street will become more congested until it is widened, the thoroughfare should be sufficient to permit adequate access to the Customhouse by automobile.

There are no sites in the National Register of Historic Places listed for Greenport or its environs.

F. Safety

Potential safety problems with the proposed action exist both on land and in the water. The proposed ferry landing at Bank and Sparyard Streets in New London necessitates access over the Penn Central mainline tracks by means of a private grade crossing which is currently not protected by any fail-safe signal. Twenty-six scheduled passenger trains and four freight trains move over the track daily. Although westbound trains have an unobstructed view of the crossing 1,200 feet before they approach it, the crossing is located 120 feet from the end of a sharp curve for eastbound trains whose view of the crossing is obstructed by an old warehouse building located on the dock side of the tracks. The authorized maximum speed for trains moving over the crossing is 25 miles per hour.

In conjunction with Mascony's application to change the use of, widen, and install an automatic protection device over the crossing, a hearing was held on this matter before the Connecticut Public Utilities Commission (PUC) on May 30, 1975. However, the PUC did not resolve the safety issue and dismissed the application without prejudice in light of the denial of applications by this Commission and the State Department of Environmental Protection.

In view of the frequency of train arrivals at the New London station, scheduling around them, particularly during the summer peak, would be difficult. Potential dangers can be mitigated, however, by installation of fail-safe crossing signals and the strategic stationing of attendants along the tracks to keep the tracks clear.

The view from the tracks approaching the station adjacent to the municipal pier is relatively unobstructed and a fail-safe protection device is already in place. Mascony also plans to station attendants at the crossing.

The increase in traffic congestion in Greenport, particularly the increase in the number of left turns being made by traffic exiting the ferry onto Front Street, is likely to result in an increase in automobile accidents in an area which is already the most accident-prone part of the village. Furthermore, stoppage of traffic on Front Street may block access to the Shelter Island ferry by way of Third Street for ambulances needed on Shelter Island. Shelter Island lacks hospital facilities and must depend on ambulances being ferried over from Greenport to answer emergency calls. However, alternate means of access to the Shelter Island Ferry would still be available through Wiggins and Fourth, Fifth, or Sixth Streets.

Another safety issue of potential importance is the ability of Mascony's vessels to navigate in Greenport Harbor without endangering fishing or pleasure craft. Small craft activity in the harbor is high during the summer months and collisions between such boats and Mascony's vessels are possible. Unfortunately, information from the United States

Coast Guard regarding the extent of the problem could not be obtained in time for inclusion in this draft impact statement. This issue will, however, be addressed in more detail in the final EIS.

G. Socio-Economic

The Greenport Planning Board alleges that the increased vehicular traffic generated by the institution of Mascony's service will have an adverse impact on the Village's development insofar as increased congestion in the downtown area may discourage regular seasonal tourists or inhabitants of nearby villages from visiting Greenport to vacation or shop. The Board further contends that ferry users will view the village merely as a ferry terminal and will quickly pass through town on the way to their ultimate destinations. While it is ture that many ferry patrons will view Greenport in this way, it is also likely that many others will probably take the time to patronize village retail establishments before boarding or after disembarking. The enhanced accessibility of downtown Greenport to New England tourists may well have a stimulating impact on the town's economy. Concomitantly, tourism in New England and Eastern Long Island in general should be stimulated by an additional ferry link between the two regions.

The inauguration of an additional ferry service may also be beneficial to Long Island potato growers by expanding their markets into New England. By decreasing transit lines and reducing fuel costs, the ferry will allow goods to be transported more efficiently and tend to promote commerce between New England and Long Island.

Institution of the proposed service will also result in a small increase in employment inasmuch as Mascony will employ between 12 and 26 crewman during the course of each year. It should be noted that this impact will be minimized in the event increased competition forces Cross-Sound to cut back or discontinue its Orient Point service.

H. Aesthetics

The Village of Greenport projects a charming, fishing village ambiance with its narrow streets, pleasure and fishing boat marinas, and large old houses. The increase in passenger and commercial vehicles generated by the Mascony ferry and its attendant congestion will tend to diminish appreciation of these aesthetically-pleasing qualities in the downtown area. Furthermore, Mascony's large vessels will be incongruous with the aesthetics of the waterfront itself.

The aesthetic impact on New London, on the other hand, will be minimal. The harbor area houses several other commercial ferry vessels in the general vicinity and the aesthetics of the area are poor. To the extent that granting the application results in the demolition of unsightly commercial buildings in the Shaw's Cove area, there will be a slight beneficial effect on the area's aesthetic values.

I. Noise

The increase in vehicular traffic generated by the ferry will result in a rise in ambient noise levels in New London and Greenport during the periods surrounding ferry arrivals and departures. Noise levels resulting from more than one source at a point are obtained by adding logarithmically. For example, while one source may emit a noise level of 50 decibels, two sources of this magnitude would produce a combined noise level of 53 decibels and three sources would result in a noise measurement of about 54.8 decibels. Therefore, the more sources that are introduced, the lower the incremental contribution will be from any new source.[28] Consequently, a very significant noise intrusion would be required to substantially change current ambient levels. However, the increase in traffic congestion in downtown Greenport may result in the spreading of downtown noise levels to areas further west on Front Street. Concomitantly, diversion of traffic from the highways between New York City and New England will result in immeasurable reductions of ambient noise levels in this corridor.

Insignificant noise intrusions will result from the sound of the ferry's engine and its whistle (if blown) as well as from the short-term pile driving of dolphins.

J. Wildlife

The proposed operation will have no impact on the shellfish, primarily scallops and oysters, which are found in the waters off Greenport. The area encompassing the harbor is closed to shellfishing in view of the existing sources of bacteria already present while the water beyond the harbor area is so deep that the shellfish beds on the bottom will not be disturbed by vessels with the size draft possessed by Mascony's ferries.[29]

The docking of the ferry in New London should result in only minimal disruption of marine habitats and, as a result of the restoration of the existing bulkhead, possibly create new habitats for marine organisms.30/

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[28] It should be noted, however, that loudness increases exponentially as decibels increase arithmetically. Sixty decibels may, therefore, be twice as loud as 50. However, at current levels of traffic in downtown Greenport, the additional noise generated by ferry traffic will not be significant.

[29] Source: New York State Department of Environmental Conservation, Region 1, Water Quality Unit.

IV. ALTERNATIVES TO THE PROPOSED ACTION

In accordance with the full disclosure aspects of NEPA, reasonable alternatives to the proposal will be presented below even though in some instances Commission jurisdiction may be limited. It should be noted at the outset that section 309 (d) of the Interstate Commerce Act prohibits the Commission from restricting the right of a water carrier to add to its equipment, facilities, or service within the scope of a certificate, as the development of the business and the demands of the public shall require.

A. No action.

The no action alternative, which entails denial of the application, would serve to maintain the status quo. Automobiles and trucks seeking to travel between New England and Long Island would either have to utilize existing ferry services or, to the extent such service is incapable of meeting demand, utilize more circuitous highway routes. Consequently, fuel may be utilized less efficiently if trips which could partially be made by ferry are made entirely over the highways. Travel between the two areas may also be less convenient and social and pleasure trips may, consequently, be less frequent than if the ferry was available.

Denial of the application would also result in the maintenance of existing Greenport traffic patterns by precluding the introduction of a large influx of ferry-related traffic. The Village's progress as a tourist attraction would neither be hindered by clogged streets nor helped by the large number of ferry travelers which would enter town.

30/ Source: Connecticut Department of Environmental Protection.

Greenport would be more free to develop its waterfront along the lines of its Comprehensive Development Plan.

Inaction would have only a minimal impact on New London, which is already served by existing ferry service. While an additional service would be consistent with the City's development plan, the plan is not dependent on a grant of the Mascony proposal.

Finally, a denial of the application would preclude potential safety hazards in New London and Greenport Harbor. While potential adverse impacts on air and water quality in the affected areas will be avoided, these impacts would not have been significant with the ferry in operation.

B. Alternative Sites

1. Greenport. The primary alternative site for the proposed service in Greenport would be the area south of the Long Island Railroad tracks. Staging would have to be accomplished south of the tracks if this site were to be used because the area north of the tracks is leased for a term of 20 years to Suffolk County and subleased to the Village which uses it to store cars for the Shelter Island Ferry. The land was made available for such purpose at no charge to the Shelter Island Ferry in order to avoid the necessity of staging vehicles on Wiggins Street. The Shelter Island ferry also holds a 15-year lease over a 4,000 square foot parcel directly north of the railroad station and adjacent to its landing site.

This site would be preferable from an environmental standpoint since it would divert traffic from the congested downtown area. Eastbound vehicles destined for the staging area could turn off Front Street at Fourth Street and cross over the railroad tracks at grade into the staging area. Safety problems would be minimal in view of the infrequency of existing passenger service into Greenport. The railroad dock site would also alleviate potential safety problems in the harbor by shifting the landing site away from the numerous marinas adjacent to Mascony's presently proposed site. Existing Mascony properties could still be utilize for parking and staging purposes. Despite these apparent environmental advantages, potential use of the Long Island Railroad site for ferry purposes may be hindered by the desire of the railroad to protect its right to future use of the property.[31]

Other potential sites may be available for ferry use in the northeastern part of the village. The feasibility of these sites has not been given serious consideration in view of the fact that Mascony has invested substantial sums of capital in property south of Front Street. If property for a parking, staging, and docking area could be made available in this area, ferry-related congestion on Front Street would be relieved since vehicles could utilize County Road 27 and North or Main Street to gain access to the ferry without entering the downtown area. However, in view of the fact that residential streets unaccustomed to handling tourist-related traffic will have to be utilized for ferry access, some disruption of residential enjoyment of the area may result.

The Tri-State Regional Planning Commission, in a study issued in December 1975,[32] considered nine potential pairs of termini for a tentative state-run cross-sound ferry operation. Greenport and New London were one of the pairs considered, with the studied site in Greenport being located on the eastern shore of the village. The study concluded that the overall feasibility of running a ferry service between New London and Greenport was poor, based primarily on the economic costs and poor highway access. It should be noted, however, that such projections were based on substantially higher volumes than those projected by applicant (between 200,000 to 2 million vehicles annually). The study rated the impact and feasibility of site access and terminal location and construction as good.

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[31] Source: Letter from Long Island Railroad, Real Estate Department, dated January 14, 1976.

[32] *Crossing the Sound: A Study of Improved Ferry Service on Long Island Sound.*

2. *Other points on Long Island.* In the event the application is denied due to operational problems in Greenport and other sites in Greenport are not feasible, Mascony could consider filing a new application seeking authority from another location in Long Island.

Mascony has already investigated alternative locations and presented an operating proposal to the Village of Sag Harbor during the summer of 1975. Sag Harbor is located on the north shore of the South Fork of Long Island, on the southern shore of Gardiner's Bay (See Figure 1). Use of Mascony's proposed Sag Harbor site would involve problems similar to what it now faces in Greenport. The docking site would be located directly north of the Business District which is characterized by quaint, narrow streets as in Greenport. Inasmuch as Sag Harbor is also a popular summer resort village, traffic problems are likely to arise during the summer months. An additional problem would be created in view of the fact that the entire Sag Harbor Village District is listed as an historic site in the National Register of Historic Places. The potential impact of ferry traffic on Village streets may adversely affect the village to the degree that a Sag Harbor proposal could require preparation of a statement under § 106 of the National Historic Preservation Act. A Mascony spokesman has informed the Environmental Staff that it would not file an application seeking authority from Sag Harbor unless it received support from the Village. Testimony at public meetings regarding the proposal showed a mixed reaction among the townspeople and an organized anti-ferry group in Sag Harbor will attempt to mobilize opinion against the ferry should an application be filed.

In addition to New London and Greenport, the Tri-State Regional Planning Commission study cited above evaluated the following sites as potential ferry termini for a cross-Sound service (the Connecticut termini are listed first in all cases): (1) Stamford-Lloyd Point, (2) Sunken Meadow-Sherwood Point, (3) (a) Bridgeport (current site) - Port Jefferson, (3) (b) Bridgeport (Fayerweather Island) - Port Jefferson, (4) New Haven-Wading River, (5) Guilford-Centerville, (6) Westbrook-Hashamock Beach, (7) Saybrook Point-East Marion, and (8) New London-Orient Point. Each pair was analyzed with respect to economic viability, and the impact and feasibility of highway access, site access and terminal location and construction. Based on 100-vehicle vessels carrying a projected 500,000 vehicles per year, it was concluded that major services would be feasible only at sites (3) (a), (4), (5), and (8) with Bridgeport-Port Jefferson and New London-Orient Point being the most attractive alternatives. Despite this conclusion, the report stated that problems could be anticipated with respect to improving highway access at Port Jefferson, terminal construction and site access at Wading River, highway access at Guilford, and terminal construction at Centreville and Guilford. Except for Orient Point, none of these Long Island sites is feasible in conjunction with Mascony's New London terminal. The Saybrook Point-East Marion location was rejected primarily because of problems associated with the Connecticut site. East Marion is located between Greenport and Orient Point and may present a feasible alternative to locating at Greenport inasmuch as it is accessible to Mascony's New London terminal. However, use of the East Marion site studied in the Tri-State report would entail construction of a 400 foot long causeway in order for vessel depths to be adequately accommodated.

C. Operational changes. In lieu of changing sites, Mascony might be able to alleviate adverse impacts by making changes in its operating proposal. It might, for example, rearrange its schedule to avoid adding to traffic in the Front Street area during peak daily periods or it could stay out of Greenport during the peak season entirely.[33] While such steps would clearly mitigate adverse impacts associated with its existing proposed schedule, it is doubtful that such an operating plan would adequately serve the public during periods of greatest demand. Furthermore, it is questionable whether Mascony could maintain a viable operation without revenues from these periods of high demand.

Traffic congestion on Front Street could be alleviated to some extent if Mascony was able to obtain a right-of-way over the property of East End Supply (See Figure 5). Ferry-related traffic could either exit or enter the staging area through Third Street without competing with Front Street traffic between Third and Main, the area where traffic levels are highest. As Table 1 indicates, hourly volumes on Third Street are much lower than those on Front in spite of the fact that it is 17 feet wider. Traffic moving onto and off Front Street by way of Third would be competing with Front Street traffic at a signalized intersection. Traffic flow, therefore, would be smoother and safety hazards would be reduced.

V. ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED.

Barring significant changes in Greenport's street alignments or traffic flow configurations, traffic generated by the proposed action will increase congestion on Front Street in Greenport which already frequently reaches its capacity during the summer months. Less severe traffic congestion may also occur in New London during peak periods.

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[33] It should be noted that the Commission lacks authority to require such changes.

This increase in vehicular traffic concentration within a relatively small area of Greenport will enhance the potential for accidents, as will the movement of vehicles across railroad tracks in New London. The potential for boat collisions within Greenport Harbor will also be increased. While there may be adverse impacts on air, water, noise pollution in Greenport and New London, such impacts will be insignificant and to some extent will be counter-balanced by improvements in the environment between New London and New York City. M[illegible]y's vessels will consume an estimated 432,000 gallons of fuel per year. Automobile and truck fuel savings attributable to utilization of the ferry should, however, result in less overall fuel consumption.

VI. THE RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF MAN'S ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG TERM PRODUCTIVITY.

The introduction of an additional ferry service linking New England and eastern Long Island is likely to have a beneficial impact on productivity. Producers in both areas will be able to expand their markets or market their goods more efficiently as a result of the fuel and travel time conserved by utilizing the ferry.

The potential increase in the number of recreational trips between the two regions stimulated by the proposed ferry would benefit area-wide economies. The local economic impact on Greenport, however, is uncertain in view of the possibility that the injection of ferry travelers into the village could have both positive and adverse effects on its attractiveness to tourists.

VII. ANY IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES WHICH WOULD BE INVOLVED SHOULD THE PROPOSED ACTION BE IMPLEMENTED.

A grant of the application would result in removal of Mascony-dedicated property in Greenport from use for off-street parking or pedestrian walkways as recommended in the Village Comprehensive Development Plan. Use of Mascony's New London properties for other potential commercial or recreational purposes will also be precluded.

DOCUMENT 315

INTERSTATE COMMERCE COMMISSION
Washington, D.C.

SERVICE DATE
JUN 11 1976

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC., INITIAL OPERATIONS -- NEW LONDON TO GREENPORT, L.I., N.Y.

NOTICE TO THE PARTIES:

NOTE: The environmental procedures followed by the Commission in this case reflect the peculiar facts of this case and are not intended to establish any precedent.

On May 29, 1973, Mascony Transport and Ferry Service, Inc., filed an application seeking authority to operate as a common carrier by water, in self-propelled vessels, transporting passengers, and automobiles with passengers, tractors, trailers and trucks, loaded and empty, between the ports of New London, Conn., and Greenport, L.I., N.Y. Public hearings were held on the matter and an initial decision, served June 19, 1974, recommended that the application be denied. On October 22, 1975, the Commission ordered that the record in the proceeding be reopened and directed that an evaluation of the environmental effects of the proposed service be made in accordance with the National Environmental Policy Act of 1969. A draft environmental impact statement was served February 3, 1976, and comments in response thereto were filed by the parties, interested State and Federal agencies, and other interested persons.

During the pendency of this proceeding the Supreme Court rendered its opinion in Aberdeen & Rockfish Railroad Co. v. Students Challenging Regulatory Agency Procedures (SCRAP), 422 U.S. 289 (1975). Also during the pendency of this proceeding the Commission on August 15, 1975, issued its proposed environmental rules in Revised Guidelines for the Implementation of the National Environmental Policy Act of 1969, 350 ICC 492. This proceeding, therefore, is a "bridge" case, and the environmental procedure followed herein represents only a practical accommodation of completed staff work and evolving environmental considerations.

Whether in fact the final rules will differ from the proposed rules cannot be determined at this time. That decision must await final Commission consideration of the rulemaking proceeding. Accordingly, procedural options available under the National Environmental Policy Act of 1969, as construed by SCRAP II, are at this time considered completely open and are not to be deemed bound by the handling of the subject proceeding.

Five copies of this notice and attached final environmental impact statement shall be served on the Council on Environmental Quality, and single copies of the notice and attached statement shall be served on appropriate Federal, State and local government agencies and on all parties to the proceeding. Additional copies are available upon request to the Interstate Commerce Commission, Washington, D.C. 20423.

ROBERT L. OSWALD,
Secretary

SUMMARY

( ) Draft (X) Final Environmental Impact Statement

OFFICE OF PROCEEDINGS, INTERSTATE COMMERCE COMMISSION

1. Type of Action:

(X) Administrative ( ) Legislative

2. Description of Action:

Mascony Transport and Ferry Service, Inc., seeks authority to operate as a common carrier by water, in self-propelled vessels, transporting passengers and automobiles with passengers, tractors, trailers and trucks, loaded and empty, between the ports of New London, Conn., and Greenport, L.I., N.Y.

3. Summary of Environmental Impacts:

Accomplishment of this action will result in adding a substantial volume of traffic to the streets in downtown Greenport during times when traffic levels already exceed design level capacity. Potential safety hazards will be created as a result of increased traffic congestion in Greenport and the need for ferry-related traffic in New London to cross ConRail mainline tracks to gain access to the landing site. Additional safety problems may be caused by introducing large ferry vessels into Greenport Harbor which accommodates a large number of small craft in the summer months. Impacts on ambient air quality should not be significant although National one-hour standards for carbon monoxide may be exceeded at ferry staging areas for short, intermittent periods. Approval of the application will probably have a beneficial impact on energy consumption as a result of diversion of automobile traffic from the highways, with fuel savings being projected to be as much as 600,000 gallons annually.

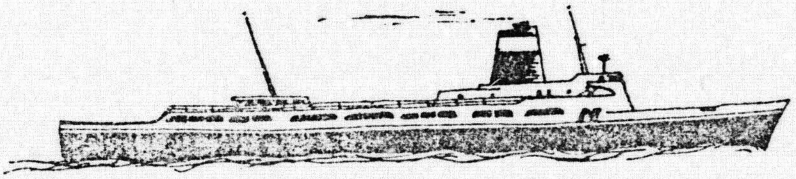
4. Alternatives Considered:

1. No action.
2. Alternative Sites:
   - A. Greenport
   - B. Other points on Long Island
3. Operational Changes.

5. Comments on the Draft Environmental Impact Statement Received From:

1. United States Environmental Protection Agency, Region II
2. United States Department of the Interior, Northeast Region
3. United States Coast Guard
4. Connecticut Department of Environmental Protection
5. Connecticut Department of Transportation
6. Connecticut State Historic Preservation Officer
7. Village of Greenport Planning Board
8. New London City Council
9. Mascony Transport And Ferry Service, Inc.
10. Cross-Sound Ferry Services, Inc., and the Bridgeport & Port Jefferson Steamboat Co.
11. Fight the Ferry
12. East End Supply Co., Inc.
13. S.T. Preston & Son, Inc.

6. Date made available to CEQ and public:



Final
Environmental Impact Statement
Docket No. W-1270

Mascony Transport And Ferry Service, Inc.,
Initial Operations --
New London To Greenport, L. I., N.Y.

Office Of Proceedings
Interstate Commerce Commission

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FINAL ENVIRONMENTAL IMPACT STATEMENT

No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC., INITIAL OPERATIONS -- NEW LONDON TO GREENPORT, L.I., N.Y.

I. DESCRIPTION OF ACTION

Mascony Transport and Ferry Service, Inc., of New Bedford, Mass., seeks authority to commence operations as a common carrier by water between the ports of New London, Conn., and Greenport, N.Y. The purpose of the application is to provide ferry service across Long Island Sound for passengers, with or without automobiles, and trucks carrying commercial traffic.

Applicant alleges that its proposed service will result in a substantial conservation of time and energy for potential ferry users inasmuch as its proposed all-water route of 21.5 miles is considerably less than the approximately 200-mile highway route between the involved points. Two existing ferries conduct operations across the Sound and oppose the application primarily on the ground that an additional service is not justified by the public convenience and necessity. Cross-Sound, Inc., (which recently obtained the operating rights of New London Freight Lines) transports passengers and vehicles between New London and Orient Point, N.Y., a site located 8 miles east of Greenport (see Figure 1). The Bridgeport and Port Jefferson Steamboat Co. (B&PJ) operates approximately 69 miles west of the site of the proposed operation, serving the ports of Bridgeport, Conn., and Port Jefferson, N.Y. Mascony alleges that existing service is incapable of meeting current demand, particularly during peak traffic periods.

Procedural History

The application was filed on May 29, 1973, and hearings were held on the matter at New London on October 29, 30, and 31, and November 1, 1973; at Greenport on December 10, 11, 12, and 13, 1973, and January 8, 9, and 10, 1974; and at Washington, D.C., on February 20, 1974. The Administrative Law Judge, in an initial decision served June 19, 1974, concluded (1) that public demand for ferry service between New London and eastern Long Island exceeded the capacity of existing services for a good part of the

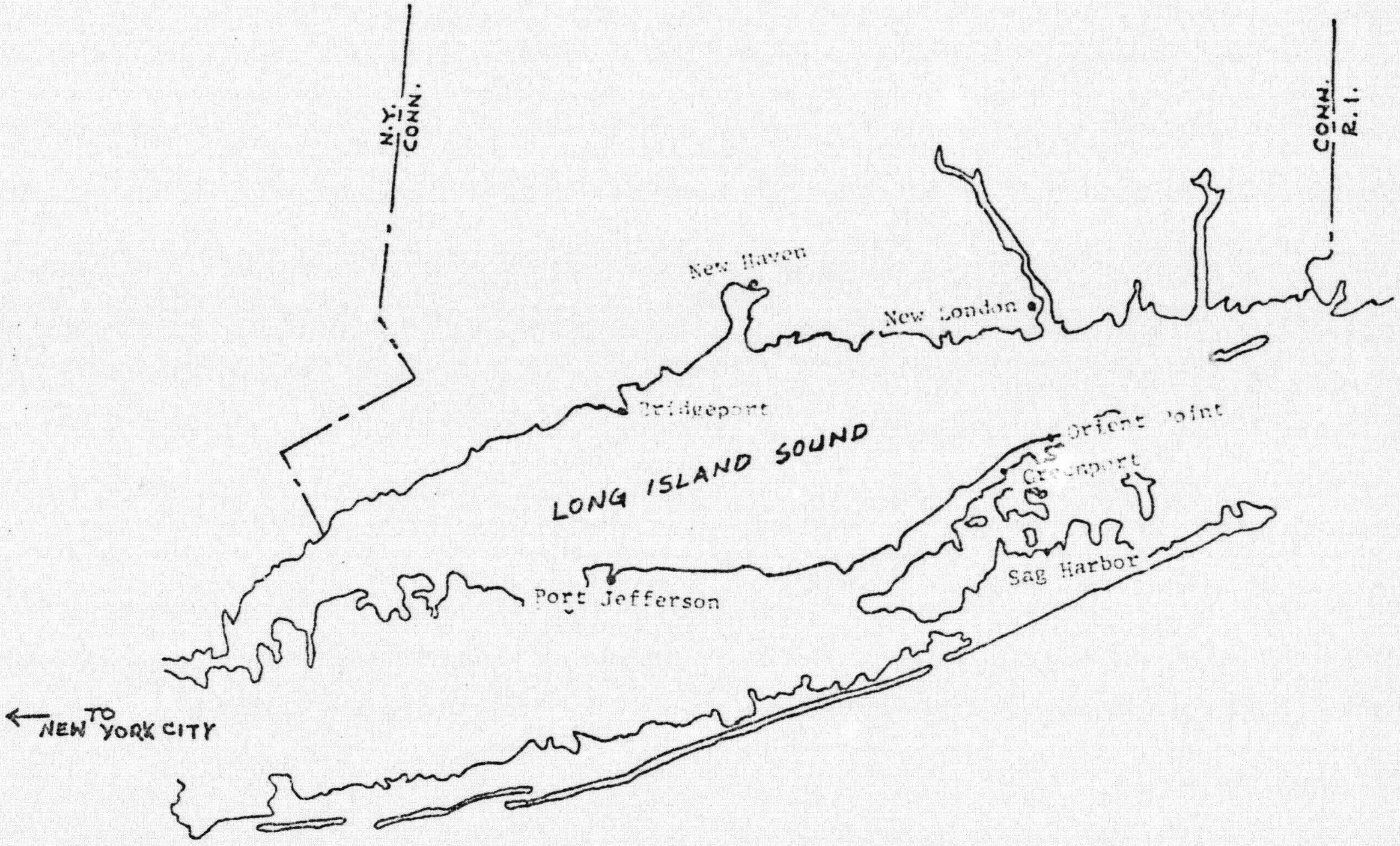
N.Y.
CONN.
CONN.
R.I.
New Haven
New London
Bridgeport
LONG ISLAND SOUND
Orient Point
Greenport
Sag Harbor
Port Jefferson
← TO NEW YORK CITY

Figure 1

year, (2) that although excess capacity during the late fall, winter, and early spring could well result in increased fares, inferior service, or both, the user public was willing to assume this risk, and (3) that the ability of applicant to provide the proposed service deserved further investigation in view of potential safety problems at New London and environmental difficulties at Greenport. The Administrative Law Judge accordingly recommended that the application be denied on the ground that the record was not sufficiently developed to permit adequate consideration of the environmental impact of the proposed action, particularly with respect to the Village of Greenport, and of the safety problems associated with the New London docking site. Mascony filed exceptions to the initial decision along with a petition to reopen the record for receipt of additional evidence.[1]

By order served October 22, 1975, the Commission, Division 1, reopened the record for receipt of tendered additional evidence[2] and reopened the proceeding for further consideration in light thereof. The order of October 22, 1975, also directed that an evaluation of the environmental effects of the proposed service be made in accordance with the National Environmental Policy Act of 1969 (NEPA) prior to any further decision on the merits of the proceeding. In response to this directive, the Environmental Staff prepared a draft environmental impact statement which was served upon the parties and appropriate Federal, State and local governmental agencies on February 3, 1976. Comments were received from several interested parties and agencies and this final impact statement was prepared based upon these comments, further consultation with government officials and other interested persons, and an analysis of the record in this proceeding.

As was pointed out in the draft, this statement is not intended to be the decisional document in the instant proceeding. The discussion herein will be limited to describing applicant's operating proposal and analyzing its environmental impacts. Therefore, it is not the appropriate forum in which to resolve such issues as the existence of a public need for the proposed ferry operation and the effect of an additional service on existing water carriers. These and other questions pertinent to a determination of whether the proposed service is required by the present or future public convenience and necessity will be ultimately dealt with in the Commission's subsequent decision on the merits.

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[1] It should be noted that Mascony filed applications to conduct the proposed service under temporary authority both prior and subsequent to the initial decision in this proceeding. These applications, which incorporated certain changes in applicant's operating proposal, were denied by the Commission's Motor Carrier Board by orders dated May 29, 1974, and May 22, 1975, respectively.

[2] Specifically, said tendered evidence included a New York Permit to improve the Greenport ferry slip, an agreement whereby applicant would utilize the New London municipal pier as a docking facility, and an amended operations plan for the Greenport docking site.

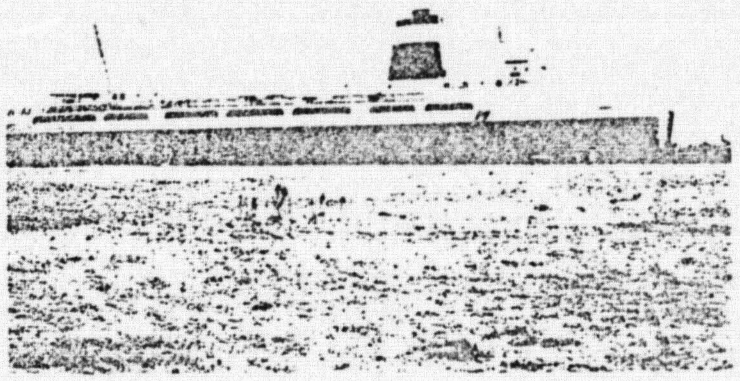
Applicant's Operating Proposal

Mascony has purchased four vessels from the Delaware River & Bay Authority (DRBA): the S.S. New Jersey (subsequently renamed the S.S. Greenport), the S.S. Cape May, the S.S. Delaware, and the M.V. Cape Henlopen. These vessels were used by the DRBA to provide ferry service across the Delaware River between Cape May and Lewes, Del., until dredging problems prompted the Authority to seek vessels with shallower drafts.

Applicant proposes to utilize the Cape Henlopen and the Greenport for its proposed operation with the Cape May available as a back-up vessel in the event one of its primary vessels is put out of service. The Cape Henlopen is a diesel-burning vessel approximately 320 feet long and 50 feet broad, with a draft of 3 feet forward and 10 feet at stern. Built in 1944, it was refurbished in 1955 and completely rebuilt in 1960. The Cape Henlopen has a passenger capacity of 600 and can carry a maximum of 80 standard-sized automobiles. or a mixed load of 60 automobiles and 5 tractor-trailers, on its six-lane automobile deck. It offers passengers such amenities as a snack bar, observation decks, rest room facilities, and passenger lounges. Holding tank facilities will be installed to prevent the release of sewage into the Sound. Operating with a crew of 12, the Cape Henlopen will utilize 120 gallons of fuel per hour at a speed of 14 knots. The vessel has a displacement of 1,790 tons.

The Greenport (see Figure 2) has an overall length of 350 feet, a breadth of 59 feet, and a 10' 6" draft. The vessel, which was constructed in 1936, lengthened and modernized in 1954, and refurbished in 1964, has a licensed passenger capacity of 800 persons. It can carry a maximum of 100 automobiles and a mixed load of 85 cars and tractor-trailers. The Greenport contains passenger amenities similar to the Cape Henlopen's and holding facilities will be installed before operations commence. A steam-powered vessel, the Greenport burns approximately 360 gallons of fuel per hour at a

Figure 2



speed of 15 knots and has a displacement of 2,758 tons. Capable of loading from either the bow or stern (as are all of Mascony's vessels), the ship will operate with a crew of 14. Mascony will spend a total of $100,000 on renovating the Greenport, the bulk of the improvements being cosmetic in nature.

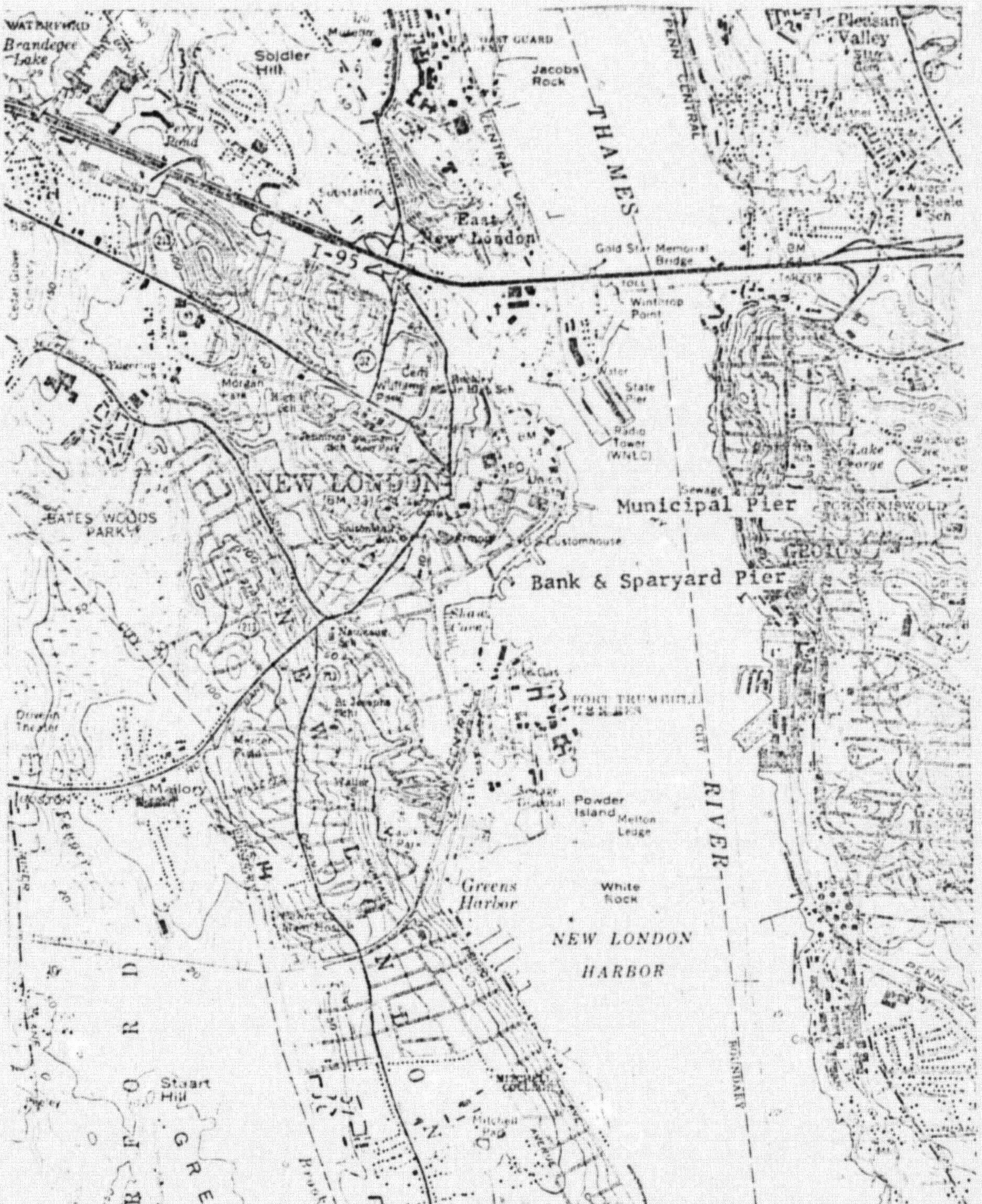
Mascony's back-up vessel, the Cape May, has the same vessel statistics, carrying capacity, and fuel consumption rate as the Greenport. Its's displacement of 2,730 tons, however, is slightly less than its sister vessel. The Cape May, a steam-powered vessel, was constructed in 1933, modernized in 1954, and refurbished in 1964. A new topside superstructure costing $1 million was added by the DRBA in 1970. Mascony does not plan to use its largest vessel, the S.S. Delaware, in service between New London and Greenport, and has offered said vessel for sale. The Delaware is 375 feet long and has the capacity to carry between 115 and 120 automobiles.

Mascony initially proposed to utilize docking facilities in New London located directly east of the Penn Central (ConRail) main line railroad tracks in the vicinity of the intersection of Bank and Sparyard Streets (see Figure 3). As a result of objections expressed by the Connecticut Department of Transportation pertaining to the lack of safety devices over the track, and the probable creation of a public grade crossing across the Penn Central tracks in contravention of Connecticut and Federal law, applicant subsequently amended its operating proposal and leased space at New London's municipal pier, located at the foot of State Street approximately 1,500 feet north of its original site (see Figure 3). However, Mascony intends to transact operations at the Bank and Sparyard Street location as soon as the operational difficulties regarding this site can be resolved to the satisfaction of the Connecticut DOT and Public Utilities Commission.[3/] In view of this fact, this environmental study will include a discussion of both sites.[4/]

[3/] Its lease on the municipal pier will expire on August 31, 1976, and does not include an option to renew. A New London City spokesman, however, has indicated that the City may extend the lease for a short period of time if use of Mascony's permanent location is imminent at the lease's expiration date.

[4/] Under the Interstate Commerce Act, a water carrier can shift and otherwise change its docking facilities within the confines of a port without additional Commission authority. Consequently, there is a need to discuss alternative sites and operations.

Figure 3


Municipal Pier
Bank & Sparyard Pier
WATERFORD
Brandegee Lake
Soldier Hill
U.S. COAST GUARD ACADEMY
Jacobs Rock
Pleasant Valley
THAMES
RIVER
PENN CENTRAL
East New London
I-95
Gold Star Memorial Bridge
Winthrop Point
State Pier
Radio Tower (WNLC)
NEW LONDON
BATES WOODS PARK
Customhouse
FORT TRUMBULL
GROTON
Lake George
Powder Island
Melton Ledge
Greens Harbor
White Rock
NEW LONDON HARBOR
Mallory
Stuart Hill
Hammond Pond
Pepperbox Hill
Hubs Island
GREAT

The New London municipal pier is located directly east of the ConRail tracks, opposite the Amtrak passenger station. The pier, which extends 350 feet into New London Harbor and is 50 feet wide, was damaged by a tugboat collision several years ago and is unsafe for docking at its end. However, Mascony's vessels would dock adjacent to the pier at its basically sound north side. The only structure to be added to the pier would be a camel (a large log) tied to the north end of the dock. Mascony proposes to stage 60 passenger vehicles on the pier itself (40 feet of the pier's 50-foot width is available for such a purpose) and an additional 20 automobiles adjacent to the pier. Tractor-trailer units and excess automobiles would be staged adjacent to Mascony's Bank and Sparyard docking site and would be directed to the municipal pier via local streets just before boarding time. Mascony will construct a non-permanent 45-foot ramp for loading and unloading of vehicles. Pedestrians will board by way of a walkway protected by pipe rail. Tickets will be sold upon boarding.

Ample facilities for overnight parking exist for those passengers desiring to leave their automobiles in New London. A municipal parking garage with space for 550 cars is located a short distance away from the municipal pier and additional parking facilities are available at the Bank and Sparyard site.

The bulk of the traffic embarking from New London is expected to enter the city by way of Interstate 95, approximately 1 mile north of the municipal pier, and will thus generally avoid entering the heart of the Central Business District. Access to the municipal pier will be by way of State Street across the ConRail tracks. State Street is a one-way thoroughfare with two traffic lanes and one parking lane. A fail-safe signaling device[5/] is located at the railroad private grade crossing which also provides access to the adjacent Fishers Island ferry dock.

Mascony's original site near Bank and Sparyard Streets assertedly has the potential for parking and staging 213 vehicles. Mascony's option to purchase this 20,000 square foot parcel, which now accommodates a number of small buildings, expired in October 1974. Mascony met with the New London Redevelopment Agency (RDA) on April 7, 1976, regarding future acquisition of the property. As part of the Shaws Cove urban

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[5/] Such a device, hooked up to the circuity of the track, obstructs access to the track whenever an approaching train comes within a specified distance of the grade crossing it protects.

renewal plan, the RDA will purchase the property, improve it and then offer it for sale to potential commercial developers. If Mascony can demonstrate its fitness to finance and develop the property, RDA would consider selling the land to it for ferry purposes. It should be noted, however, that if other development proposals are filed they may be similarly entertained in determining the future use of the parcel. Utilization of the site as a ferry terminal would require demolition of certain buildings and hardtopping of the area. Mascony would also have to install a grade crossing across the Con-Rail tracks with a fail-safe signal to satisfy the Connecticut Department of Transportation and the State Public Utilities Commission. Mascony has applied to the State Public Utilities Commission for a permit to construct a grade crossing at the site but its application was denied without prejudice in view of the denial of the application in the instant proceeding and the failure of Mascony to obtain a permit from the State Department of Environmental Protection and the United States Army Corps of Engineers for the construction of dolphins in New London harbor and the installation of a new bulkhead.[6] If approval for a public grade crossing should ultimately be granted,[7] applicant will install a fail-safe crossing signal and station attendants along the tracks to direct traffic safely across. The rail right-of-way would be fenced off. Mascony plans to install dolphins adjacent to the stone jetty pier, install and maintain a sheet steel piling bulkhead to make the existing dock more uniform for use, and fill the area behind the new bulkhead with 1,915 yards of clean bank gravel.[8]

Mascony proposes to stage vehicles west of the railroad tracks and direct them across the tracks directly onto the ferry, which they will board by means of a non-permanent 45-foot ramp. The major approach to the docking site would be by way of Bank Street, now a two-way thoroughfare with one parking lane and one traffic lane in each direction. Vehicles would make either a right or left turn from Bank directly onto the Mascony docking site. An alternate means of access to Mascony's property would entail making a left turn from Sparyard Street.

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[6] Mascony's initial application to the Department of Environmental Protection proposed placing dolphins at the tip of the pier. This proposal was denied without prejudice on the ground that the ferry would extend into the secondary channel during loading and unloading and thus interfere with the navigation of the secondary channel by commercial and pleasure craft. The Memorandum of Decision suggested that Mascony amend its plan, which it has done. However, applicant has yet to submit a new application in view of the uncertain status of the instant operating rights application.

[7] Under 23 U.S.C. § 322(a) (amended 1975), the Secretary of Transportation may allow certain private grade crossings to continue operating provided they are equipped with the best available protection. Pursuant to Chapter 279 of the Connecticut General Statutes, the approval of the State Public Utilities Commission is required to change the use of and widen and install automatic protection at private grade crossings.

[8] Such improvements would be contingent on the approval of the State Department of Environmental Conservation and the Army Corps of Engineers.

Applicant's mooring facility at Greenport extends approximately 350 feet into Greenport Harbor. The width of the proposed ferry slip ranges between 70 and 100 feet. Fourteen dolphins will be installed in the slip to accommodate vessels during docking and Mascony has been issued Tidal Wetlands and Stream Protection Permits and Water Quality Certification by the New York State Department of Environmental Conservation pertaining to said dolphin installation. However, it has not yet received approval from the U.S. Army Corps of Engineers for the project inasmuch as Corps action on Mascony's application has been suspended until a final decision on the instant operating authority application is issued. In view of the fact that the adjacent water level is a minimum of 11.5 feet deep at mean low tide,[9] dredging will not be necessary.

Mascony's proposed docking and terminal facility is located south of Front Street, between First and Third Streets. Applicant originally planned to dock 50 feet further west but potential interference with the Shelter Island Ferry which docks a short distance west prompted it to amend its operating proposal. Mascony owns two 11,000-square foot parcels at the corners of Front and Third Streets (see Point A, Figure 4), and Third and Wiggins Streets (Point B), and a 20,000-foot parcel known as the Bohack Property (Point C) abutting the Greenport Playhouse on Front Street. In addition, Mascony asserts it can renew its expired option to purchase a 20,000 foot parcel on Third Street north of Wiggins (Point D) if additional space is needed for parking or staging. Applicant asserts that it has a valid lease on a large parcel extending from Front Street to its pier (Point E) which it proposes to use for staging purposes. Mascony's legal interest in this property is challenged by Cross-Sound and the owners of the property, Harry and Pauline Mitchell. Mascony leased the property from Advine Realty Co. in February 1974, said lease to commence after approval of its application in the instant

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[9] Report by Donald F. Carson, Hearing Officer, State of New York Department of Environmental Conservation, in Tidal Wetlands Application No. TW-15277-0053.

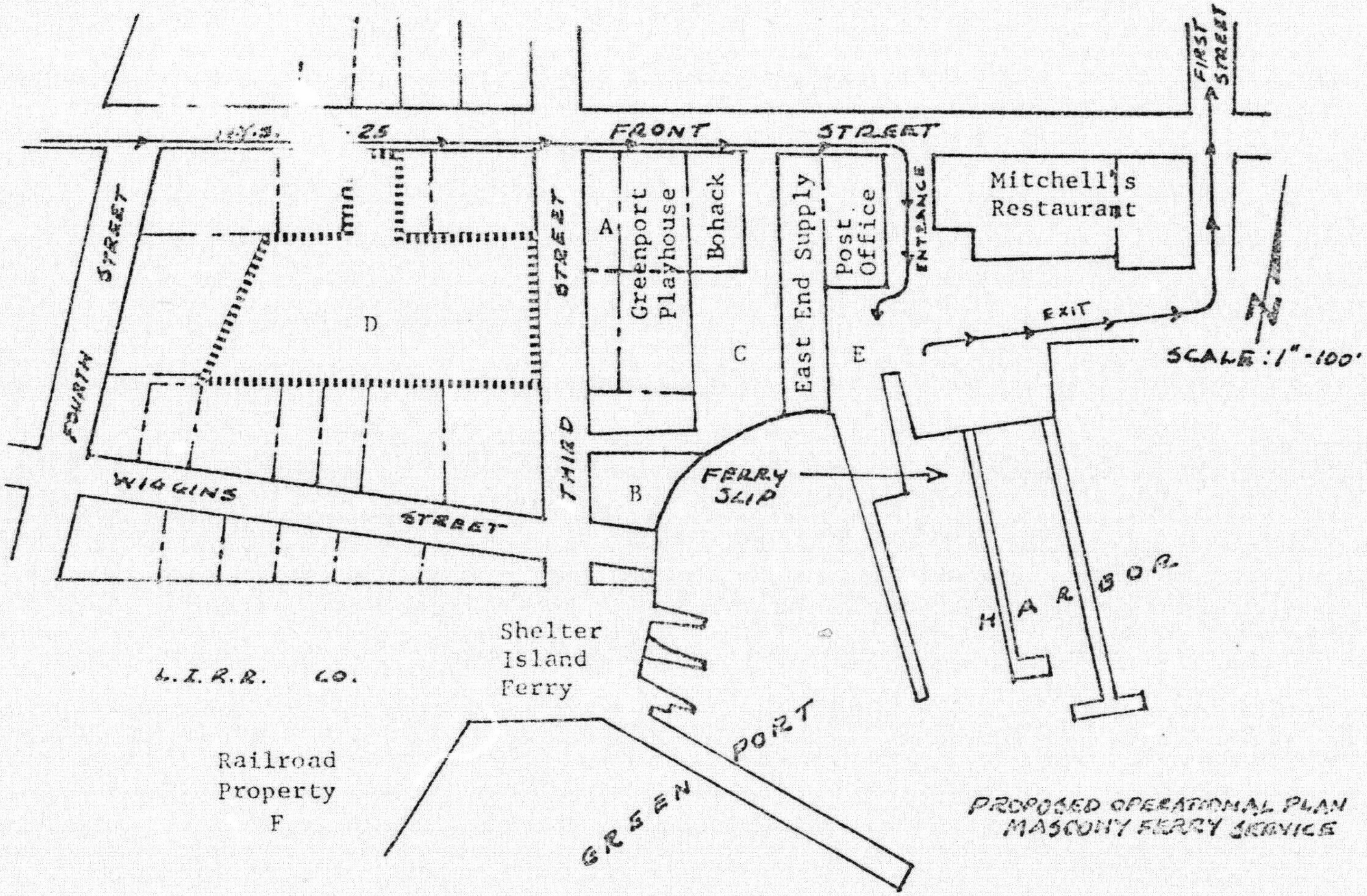
U.S. 25
FRONT STREET
FIRST STREET
FOURTH STREET
THIRD STREET
WIGGINS STREET
A
B
C
D
E
F
Greenport Playhouse
Bohack
East End Supply
Post Office
ENTRANCE
EXIT
Mitchell's Restaurant
SCALE: 1" - 100'
FERRY SLIP
HARBOR
Shelter Island Ferry
L.I.R.R. CO.
Railroad Property
GREENPORT
PROPOSED OPERATIONAL PLAN
MASCONY FERRY SERVICE

FIGURE 4

proceeding. Advine Realty owned the property pursuant to a purchase money mortgage from the Mitchells who subordinated their mortgage to Mascony's lease. Advine defaulted on the mortgage and the Mitchells foreclosed in January 1976. The Mitchells challenge the validity of Mascony's lease and are considering taking legal action to assert their position. Mascony also asserts that it acquired an 18-foot right-of-way behind Mitchell's Restaurant to be used for exiting from the ferry landing area. The Mitchells claim that this right-of-way was cut off by the foreclosure sale. Resolution of these legal issues are beyond the scope of the instant environmental analysis, and the issues are presented herein primarily in response to comments received on the draft impact statement. Nevertheless, as Mascony's proposal contemplates using the disputed property, the analysis will focus on the environmental impacts associated with this location. However, potential alternative sites in Greenport which could be used in the event Mascony is unable to utilize its proposed site are also discussed in a subsequent section of this impact statement.

In addition to installing dolphins, Mascony will remove a dogleg extending from the end of the pier. Although no other structural improvements to the ferry slip are planned, a potential erosion problem exists with respect to Mascony's staging area which may eventually necessitate construction of new bulkheads.

In view of the fact that most potential ferry users are likely to be oriented from areas west of Greenport, the major access to the ferry slip will be by way of New York State Route 25, an east-west cross-Island highway which becomes Front Street in the vicinity of the ferry landing site. To gain access to the ferry, eastbound traffic will make a right turn off Front Street onto a 55-foot alleyway between the Post Office and Mitchell's restaurant (an unused banquet hall will be partially demolished to create the access corridor). Vehicles would then move directly into the main staging area prior to boarding the ferry. Traffic staged on one of Mascony's other properties would have to move north on Third Street to Front Street and then along Front Street to gain access to the 55-foot alleyway into the docking area since a lack of right-of-way over property owned by the East End Supply Company prevents access along the waterfront. Ferry traffic disembarking in Greenport would be routed in two directions. Initially, applicant proposed to direct all traffic onto Front Street through the 55-foot alley but then amended its proposal to provide for the use of First Street as an exit route. However, allegations by Village representatives to the effect that First Street's 72-year old sewer pipes, which are laid only a few feet below the road surface, could not withstand the weight of the heavy tractor trailers which the proposed ferry service would generate induced Mascony to further amend its operational proposal. Applicant now proposes to direct all commercial traffic to Front Street with passenger vehicles being divided between Front and First. Vehicles exiting through First Street would not be permitted to turn onto Front, being directed across that thoroughfare by attendants stationed at the intersection of First and Front. Traffic routed through First Street would move north to County Road 27 which serves as a bypass to State Route 25.

Mascony asserts it will be able to stage 100 vehicles in the area adjacent to the ferry slip, 50 vehicles each on its Front and Third and Wiggins and Third properties, and 100 vehicles on the Bohack property. Overnight parking facilities would be available at Mascony's Third Street properties. Loading and unloading of vehicles would be accomplished by means of a 40-foot ramp extending from the bow of the ship. Passengers would board by means of a gangway extending from the side of the vessel.

Mascony proposes to operate all year-around, the number of daily trips to depend upon the particular season of the year. It will utilize one vessel, the Cape Henlopen, the entire year, supplementing it with the Greenport during the 66-day summer peak period. The proposed schedule is listed below:

January 1st to April 29th

LV. NEW LONDON	ARR. GREENPORT	LV. GREENPORT	ARR. NEW LONDON
8:00 A.M.	9:30 A.M.	10:00 A.M.	11:30 A.M.
6:00 P.M.	7:30 P.M.		

(The 8:00 A.M. departure would alternate between Greenport and New London every other day).

April 30th to July 29th

LV. NEW LONDON	ARR. GREENPORT	LV. GREENPORT	ARR. NEW LONDON
8:00 A.M.	9:30 A.M.	10:00 A.M.	11:30 A.M.
6:00 P.M.	7:30 P.M.	8:00 P.M.	9:30 P.M.

July 30th to October 3rd

LV. NEW LONDON	ARR. GREENPORT	LV. GREENPORT	ARR. NEW LONDON
6:00 A.M.	7:30 A.M.	6:00 A.M.	7:30 A.M.
8:15 A.M.	9:45 A.M.	8:15 A.M.	9:45 A.M.
4:00 P.M.	5:30 P.M.	11:15 A.M.	12:45 P.M.
7:15 P.M.	8:45 P.M.	7:15 P.M.	8:45 P.M.

October 4th to December 31st

Same schedule as January 1st to April 29th.

It should be noted that Mascony may expand its schedule to four roundtrips daily during June or July if demand warrants.

Applicant projects that it will be operating at 30 percent of capacity from January 1 to April 29, 40 percent of capacity from April 30 to July 29, 60 percent of capacity during the July 30 to October 3 peak season, and 35 percent of capacity the rest of the year. Mascony estimates that it will book 66,385 vehicle spaces (95 percent passenger and 5 percent commercial vehicles) and carry 300,000 passengers annually. Applicant arrived at this figure by averaging New London Freight Lines ridership during the first and last three weeks of operation in 1972 and taking into consideration the high number of turnaways observed during peak season.[10] Based on a survey of riders in the Connecticut DOT preliminary report, it is anticipated that the ferry will be used primarily for social or recreational purposes and on an irregular basis. Mascony's projected traffic mix of 95 percent passenger and 5 percent commercial vehicles is also based on the past experience of its putative competitor. However, Mascony anticipates a large volume of seed potato traffic (approximately 800 tractor-trailer units) moving between Long Island and Maine during February and March, a time during which passenger use will be at its lowest.

In contrast to Mascony's proposal, Cross-Sound's existing service is characterized by smaller vessels making more frequent sailings. Cross-Sound operates five vessels, the M/Vs Orient, Plum Island, Manisee, Manitou, and Caribbean Ferry, with vehicle carrying capacities ranging between 12 and 24. Between one and three vessels are in service simultaneously, depending upon the time of year. Cross Sound's 1976 schedule is divided into three segments. During its Spring and Fall schedule (April 30 through June 10 and

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[10] The Connecticut Department of Transportation, Bureau of Planning and Research recorded 150 vehicles turned away on August 16 and 124 turned away on August 18, 1972, in a preliminary report analyzing the Orient Point ferry.

September 20 through October 31), Cross Sound sails seven times daily from both New London and Orient Point. Its Summer schedule (June 11 through September 19) lists 11 departures from each port, with one additional trip on Fridays and Sundays from July 2 through September 12. Cross-Sound's Winter schedule (January 1 through March 11 and November 29 through March 1977) is characterized by three departures from each port on weekdays and four daily departures on weekends. Protestant also schedules four sailings a day from March 12 through April 29, seven daily trips on Easter, Christmas and New Year's weekends and five daily trips on Memorial, Columbus, and Thanksgiving weekends. Cross-Sound's predecessor, New London Freight Lines, had not previously transported truck traffic during the winter months but Cross-Sound began doing so when it began operations in March 1975. Ferry service for trucks, however, is primarily dependent on the availability of the two larger vessels, the Orient and Plum Island, although the Caribbean Ferry can carry a limited number of commercial vehicles.

B & PJ transports passengers and vehicles on the M/V Martha's Vineyard, a 202-foot long vessel with a 50 foot beam. The Martha's Vineyard has a 33-vehicle and 1061-passenger capacity and runs from May 25 to October 14, making between three and five round-trips daily depending upon the season and day of the week.

From March 22, 1975, the date Cross-Sound commenced operating the Orient Point ferry, to November 30, 1975, it has carried 62,549 vehicles and 120,174 passengers between Orient Point and New London. Based on volume capacities supplied by protestant, this traffic is equivalent to an average of 15 percent of passenger and 70 percent of vehicle capacities for scheduled runs (See Table 1). Unlike its predecessor, Cross-Sound accepts reservations.

II. RELATIONSHIP TO LAND USE PLANS, POLICIES, AND CONTROLS

A. Greenport

The Village of Greenport is part of the town of Southold which comprises the major portion of the north fork of eastern Long Island, bounded by Long Island Sound on the north and Peconic and Gardiner's Bays on the south. The area is predominantly agricultural, the primary crop being potatoes, with generally uniform topography of gentle to moderate slope. In addition to its extensive farmland, the most important physical feature of the Township is its many miles of waterfront. Greenport is located on the

TABLE I

CROSS-SOUND FERRY SERVICE, INC.

1975 CAPACITY AND TRAFFIC STATISTICS

Month		Capacity	Traffic Handled
March*	Passengers:	14,920	2,038
	Vehicles:	1,580**	907**
April	Passengers:	44,760	4,705
	Vehicles:	4,740	2,541
May	Passengers:	57,892	9,542
	Vehicles:	9,758	5,576
June	Passengers:	117,600	15,254
	Vehicles:	13,056	8,303
July	Passengers:	163,680	27,482
	Vehicles:	15,872	12,640
August	Passengers:	163,680	32,686
	Vehicles:	15,872	14,553
September	Passengers:	127,800	12,718
	Vehicles:	13,632	9,047
October	Passengers:	58,280	9,794
	Vehicles:	9,920	5,974
November	Passengers:	45,536	5,955
	Vehicles:	5,064	3,088

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*Operations commenced March 22, 1975, under temporary authority pending approval of transfer of operating authority from previous owners to Cross-Sound Ferry Service, Inc.

**Vehicle capacity is measured in terms of conventional passenger vehicles. In calculating traffic handled conventional passenger vehicles are each counted as one vehicle and trucks are counted as three vehicles each since 55' tractor trailer combination occupies three passenger vehicle spaces. Since many of the trucks handled were actually less than full size tractor trailers the figures shown for vehicle traffic handled are somewhat overstated.

Source: Cross-Sound Ferry Service, Inc.

south shore of Southold and has one of the three deep water ports on Long Island outside of New York City. The dredged channel has a depth of 40 feet. Because of its harbor, Greenport has become a prominent fishing village (the major catch being shellfish) and the site of fish packing and canning industries as well as a popular port of call for pleasure craft. The predominant form of land use in the Village is the single family residence which accounts for over 25 percent of the Village's developed land. While some two-family and multi-unit buildings do exist in the village, the majority of residences are large, old structures on relatively large plots of land. Commercial activity is concentrated along Front Street between Third and Main Streets and Main Street between Front and the waterfront. Most commercial activity is devoted to retail and marine-related businesses with less than 2 percent of the village being subjected to industrial and heavy commercial use. Most of this commercially-devoted acreage is concentrated along the waterfront and the Long Island Railroad tracks. According to the Village Comprehensive Development Plan, only 4 percent of the Village's gross land area (approximately 20 acres) is available for development.[11/]

Although the population of Suffolk County has skyrocketed during the past 20 years, and that of Southold has increased moderately, the population of Greenport has declined by 18 percent, from 3,082 in 1950 to 2,481 in 1970. There are proportionately more persons in the 45 years or older age group residing in the Village than in the County as a whole, the average age of Village residents being approximately 38 years.[12/] The indications are, therefore, that in addition to its resort town character Greenport is viewed by some as a desirable retirement community.

Suffolk County has been designated a depressed area eligible for full financial assistance by the United States Department of Commerce, Economic Development Administration. In addition, the Village of Greenport has been labeled a depressed area by the County because of its higher unemployment rates, lack of new municipal facilities, and lower family income.[13/] Village planners assert, however, that conditions have improved in recent years as increased tourism has invigorated the Village's economy. The Village

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[11/] Data for this paragraph was obtained from the Comprehensive Development Plan, Town of Southold, Village of Greenport, part I.

[12/] Source: 1970 census data.

[13/] 1970 median family income for Greenport was $8,664, compared to $9,949 for the Town of Southold and $12,084 for Suffolk County. Source: 1970 census and Suffolk County Planning Commission.

Comprehensive Development Plan seeks to take advantage of Greenport's natural features and build upon its success as a summer resort. The plan recommends promotion of maximum use of the Village's waterfront facilities and development of a diversity of water-oriented activities. A pedestrian mall which would be closed to vehicular traffic is recommended for Adams Street, a block north of Front Street. The plan recognizes the adverse effect of on-street parking on Front Street upon efficient vehicular flows and proposes adding approximately 300 public off-street parking spaces, as well as widening key thoroughfares. The plan proposes to enhance the waterfront area by constructing landscaped pedestrian walkways leading onto the waterfront and filling in boat slips for recreational use. Implementation of the specific recommendations made in the plan, however, is speculative. The Village is considering plans for a marine museum, to be known as the Greenport Aquaseum, to be constructed and operated by the Middle Atlantic Natural Science Council, Inc. Although Mascony has offered the Council its building on the Bohack property on Front Street for museum purposes on the condition its operating right application is approved, the Village Board is expected to make available a 5 acre parcel on Moores Lane, approximately 1/4 mile northwest of the business district. Use of this site, which has been approved by the Aquaseum's Board of Directors, would contemplate parking facilities at the museum and a shuttle bus service between the site and downtown Greenport. The museum will be built in modular fashion with expansions planned in the event additional funding becomes available. It is initially expected to attract a minimum of 50,000 visitors annually, primarily from Nassau, Suffolk and Queens Counties, N.Y. The museum could, however, also attract tourists from southeastern New England. Current tourist attractions in the Village include an Oyster Festival one day each year in October and a 1-day art show during the summer season. An in-the-water boat show which would run for two weeks is in the planning stages.

Existing land use for the area directly adjacent to the ferry is zoned waterfront commercial. The Shelter Island ferry, which transports passengers between Greenport and Shelter Island in 85-foot long and 30-foot wide vessels, docks approximately 300 feet to the west. The area adjacent to the proposed Mascony site on the east is devote to marina use and houses small fishing and pleasure craft (see Figure 4).

Although the proposed ferry service would bring a large number of tourists into town from the New England area, members of the Greenport Planning Board assert that the ferry would be inconsistent with the Comprehensive Development Plan and would seriously alter t[illegible]aracter of the Village. They allege that traffic generated by the ferry will clog village streets to such an extent that residents of nearby villages and regular summer tourists will avoid coming into Greenport. It is further alleged that unlike the regular tourist trade, ferry travelers will perceive Greenport solely as a connection between New York and New England and, consequently, will not patronize village business establishments. Mascony's utilization of its present site, while consistent with the area's present zoning classification of waterfront commercial, would be inconsistent with Greenport's plan to develop its waterfront area for recreational uses or as a location for off-street parking for village shops. It is contended, therefore, that the ferry will hinder rather than promote the Village's development as a resort town.

Members of the Village Planning Board indicate that alternative docking sites would be less disruptive to the Village's development plans to the extent they avoid placing ferry traffic in the heart of the Village commercial district. The only alternative site to be given serious consideration thus far is an area south of the Long Island Railroad pier located approximately 500 feet west of Mascony's present location (See Figure 4, Point F).

Greenport is the easternmost terminus of the Long Island Railroad on the north fork of Long Island. During the 19th and early 20th centuries, the railroad operated a car ferry service transporting both passengers and rail freight from this pier to New England. The service was abandoned in 1930 and the pier has remained unutilized since that time. The railroad owns approximately 100,000 square feet of property, including a passenger depot and the land underlying the tracks. Current railroad service to Greenport is infrequent with only two passenger trains entering and leaving the station each day. Use of the approximately 61,000 square foot area south of the pier would not only eliminate potential navigational problems associated with Mascony's currently proposed site but would also alleviate much of the traffic problem which would arise from diverting ferry traffic directly into the center of town. Staging for the ferry could take place on the unused railroad property itself or on the nearby Mascony properties. The parcel now is encumbered by unused trackage and a turntable, both of which the railroad intends to remove regardless of the future disposition of the land. While there would be some disruption to residential uses adjacent to the traffic approach to the railroad site, the impact on the town in general would be substantially less severe. The railroad has no objection to leasing its property for ferry purposes providing that its right to future use of the property can be preserved. Although the Village has the right to utilize the south side of the railroad pier for docking of fishing or pleasure boats, it does not now contemplate such use and would prefer to convert the pier to a fishing wharf or pedestrian dock. It is not optimistic, however, about obtaining funding for such a project. Access to the Long Island Railroad property could be provided by way of Fourth Street which crosses Front Street west of Third. Fourth Street is a two-way road with approximately 50 feet of crossection. A grade crossing would have to be constructed over the railroad tracks to reach the property. Use of this site, however, would require installation of a steel sheeting bulkhead, dredging (the depth of the water being only 3 feet), and filling in a washed out portion of the pier. Docking would consist of a drag line operation from the beach. The above-mentioned alterations would require a permit from the U.S. Army Corps of Engineers and the State Department of Environmental Protection.

Other potential alternative docking sites exist in the extreme eastern part of the village, north of the commercial district. These sites, also zoned waterfront commercial, are located adjacent to residential areas. Utilization of these sites would result in less congestion than in the downtown area but would entail potentially more interference with residential use. It is not known whether sufficient land would be available in these areas for staging and parking purposes.

B. New London

New London, a city of 31,360 persons, is situated in southern New England, roughly midway between New York City and Boston. The city is located on the west bank of the Thames River at the entrance to Long Island Sound, which bounds the City on the south. New London is a shipbuilding and manufacturing center whose major products include pharmaceuticals, printing presses, engines, paper products, and furniture. Its economy is based primarily on defense industries and services employment. Because of its harbor, one of the deepest on the Atlantic Coast, New London developed as a whaling and sealing port in the 19th century. The city's extensive waterfront (totaling 5.5 miles) is still considered to be its most valuable natural asset and houses three other ferry services besides the one proposed by Mascony - the Orient Point, Fisher's Island, and Block Island ferries. The U.S. Navy Submarine Base maintains 17 piers and the harbor is used extensively by Navy and Coast Guard vessels. New London is the site of the United States Coast Guard Academy as well as several national historic sites. New London experienced a decline in population between 1960 and 1970, due largely to outmigration to the suburbs. Current land use is primarily high density residential with some high density mixed urban concentrations and intensive institutional uses.

The municipal pier at the foot of State Street is part of a planned multi-modal transportation terminal to accommodate interchange between automobile, rail, bus, ferry service and taxi linked to air commuter service at the City's Trumbull Airport. The City has developed a 550-car municipal parking garage to support such development and has proposed several improvement projects designed to facilitate coordination between the various transport modes. It has applied to the State Department of Transportation for financial assistance in implementing these plans. Proposed projects include the development of a bus terminal adjacent to the municipal garage, construction of a pedestrian bridge to connect the garage to the train platform and, eventually, to the various ferry landings, and in the long term, development of physical links to the ferry services, removal of Penn Central spur tracks, and overall development of the waterfront. Thus, location of the proposed ferry service at the municipal pier on an interim basis would be consistent with city plans in the area.

Mascony's primary site at Bank and Sparyard Streets is located within the Shaw's Cove area, a district scheduled for urban renewal. Plans call for rehabilitation or demolition of buildings and widening of streets in the area surrounding Mascony's property. Bank Street, the major artery carrying traffic to and from the proposed service, would be widened and converted to a one-way thoroughfare northbound. Eugene O'Neill Drive, a major connector between Interstate 95 and the waterfront, will be extended to connect with Tilley Street at a point one block west of Bank Street in the vicinity of the proposed terminal and will be converted into a one-way throughfare southbound. Blighted waterfront property will be reclaimed in an effort to reestablish the area for pedestrian and marina use. At the present time much of the area around the waterfront has been left to deteriorate and is unsuitable for recreational purposes. Rehabilitation has already begun and institution of the proposed service in the Shaw's Cove area is expected to assist in the area's rejuvenation.

In order for the City to obtain funding for this urban renewal project from the U. S. Department of Housing and Urban Development, it must make some provision for protecting Shaw's Cove against hurricane-induced floods. Consequently, the City Redevelopment Agency is working with the U.S. Army Corp of Engineers in planning construction of a hurricane barrier along the Shaw's Cove waterfront. The plans for this project have undergone several revisions and are still conceivably subject to change. The current plan, as described in a Corps of Engineers final environmental impact statement issued in April 1976, contemplates construction of approximately 2,800 feet of earth berm from 12 to 14.5 feet above mean sea level to be connected by approximately 300 feet of "L" Wall with a top elevation of 14.5 feet. The proposed project is expected to provide flood protection for approximately 45 acres in the Shaw's Cove area.

The present plan would affect access to Mascony's Bank and Sparyard docking site since it calls for construction of the "L" Wall between the ConRail tracks and Bank Street, thus cutting off Mascony's staging area from the pier. The only access to the waterfront would be by way of a ramp which would allow vehicles to drive over the berm and "L" Wall at Sparyard Street. The ramp would connect to a service road approximately 24 feet wide with one traffic lane in each direction. This road would serve properties located between the railroad tracks and the Harbor. The New London RDA indicates, however, that actual construction of the hurricane protection project may be approximately 2 years away and that plans could be revised to accommodate landowners along the waterfront.

The proposed use of the Bank and Sparyard property by Mascony is not consistent with the Federal Railroad Administration's general policy to eliminate private grade crossings along the Northeast rail passenger corridor between Washington, D.C. and Boston. This policy is designed to carry out the goals set forth in Title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210). This part of the act directs the Secretary of Transportation to improve high speed rail services in the Northeast corridor in terms of speed and reliability of service as well as safety. A study performed for the FRA by the Bechtel Corporation recommended that all but three of the private grade crossings in New London be abolished to help meet this goal. Abolition of the private grade crossing across Mascony's proposed Bank and Sparyard site would require permission from the State Public Utilities Commission which would hear the matter pursuant to a petition filed by FRA. Inasmuch as the FRA would propose to purchase the crossing from the appropriate landowner prior to dissolving it, implementation of its plan depends on whether budgetary funds can be made available.

Finally, the New England River Basins Commission has issued a study entitled People and the Sound: A Plan for Long Island Sound. The report, a cooperative effort prepared by a team of Federal, State and Regional agencies, local citizens, and the scientific community recommends that a long-range management program be developed to protect critical environmental areas along the shore and assure opportunities for greater public access to use of the Sound. More specifically, it adopts the policy that public transit to and from shorefront facilities should be encouraged to minimize the current near-exclusive reliance on automobiles. The report recommends a state-subsidized mid-Sound crossing between New Haven and Shoreham. In addition, the report recommends development of small passenger ferries or launches to enhance recreational access to beaches. To the extent that the plan indicates a need for an additional ferry service, Mascony's proposal would be compatible. However, if a New Haven-Shoreham service was to be instituted (this is admittedly speculative), the operations of Mascony from New London and Greenport could adversely affect the viability of such a service.

The report also recommends that steps be taken to protect certain scenic townscapes, including Greenport, and that a public marina be developed in Greenport Harbor. Institution of ferry operations may be inconsistent with these general plans, should they ever be implemented.

III. ENVIRONMENTAL IMPACTS

A. Traffic Congestion

The proposed service will result in increased vehicular traffic in both of the involved localities, creating possible traffic flow problems. Applicant's Bank and Sparyard site in New London is in the midst of the Shaw's Cove urban renewal area where the local highway system is being improved. As a result of redevelopment, an alternate one-way north-south street system with 36 feet of cross section in each direction will be available between the proposed ferry landing and Interstate 95. This arrangement will increase highway capacity to such a level that the traffic likely to be generated by Mascony would be insignificant in comparison to such increased capacity. The initial configuration of Bank Street and O'Neill Drive, the most likely access and egress routes to the ferry site, is contemplated to be two 12-foot travel lanes and one 12-foot parking lane. Estimated urban intersection approach service volumes for one way streets with parking on one side approximate 2,400 vehicles per hour green for this highway configuration.[14/] When the growth of traffic warrants, the street configuration will be changed to three 12-foot travel lanes. Table 6.5 of the Highway Capacity Manual estimates approach service volumes for such a configuration to be 3,200 vehicles per hour green. Both of the volumes mentioned assume Level of Service D (traffic approaching unstable flow), and additionally assume 10 percent left turns, 10 percent right turns and 5 percent trucks and through buses. Since the streets under consideration are the major arterials in the area, it can be assumed that they would have priority in the signalization pattern. With 75 percent green time for these two major highways, the resultant approximate capacities would be 1,800 vehicles per hour in the two through lanes. It should be pointed out that these values are for comparison purposes only to approximate the volume of the proposed street configurations.

The final design of the street system, particularly within the area of the proposed ferry operation, is incomplete. Such undecided design elements as the final transition curve from Bank Street to the station with related questions of property acquisition and the possibility of a pedestrian bridge over the highway to the municipal parking lot, could result in variations in street widths and the final highway capacity in this area. The final decision on the matters is expected in the summer of 1976. The capacities discussed above, however, should be accurate estimations of the actual capacities which can be accommodated on these streets. Inasmuch as the capacity of the Greenport is 100 automobiles and that of the Cape Henlopen 80, a capacity ferry load discharged into the traffic stream would comprise approximately 4 percent of the three through lane highway capacity. Current traffic figures for the involved area indicate that

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14/ *Highway Capacity Manual*, HRB 87, Highway Research Board (1965), figure 6.6. "Vehicles per hour green" indicates the number of vehicles which move through an intersection for each hour the traffic signal is green in a given direction. Thus, if the signal is green half of the time in each direction, the number of vehicles crossing the intersection in each direction would be measured over a 2-hour period.

existing volumes do not approach capacity. Peak hour volumes for northbound traffic on Bank Street at its intersection with Tilley range between 329 (A.M.) and 571 (P.M.) vehicles per hour while southbound volumes range between 514 (A.M.) and 525 (P.M.) vehicles.[15/] Additional peak hour volumes in the area are:

	A.M.	P.M.
Bank Street (left turn on Tilley)	69	60
Bank Street (right turn on Tilley)	19	36
Tilley Street (left turn on Bank)	23	55
Tilley Street (right turn on Bank)	57	111

However, in view of the significant changes to traffic circulation patterns and the adjoining land use which will result from urban renewal, such figures are not reliable indicators of post-renewal traffic levels. Bank Street will become a one-way thoroughfare northbound, precluding its use as an access route for southbound travelers coming off of Interstate 95. Access to the ferry from I-95 will be by way of O'Neill Drive southbound into Tilley Street eastbound and across Bank Street to the landing site.

A greater potential for traffic congestion exists at the municipal pier site. The Orient Point ferry, now located a half-mile south of Mascony's Bank and Sparyard landing site, plans to relocate a short distance north of the municipal pier, adjacent to the Block Island Ferry landing site. The Fishers Island ferry now docks at the other side of the municipal pier. This concentration of ferry services in an area which will also contain a bus and railroad terminal may result in traffic tieups during the summer peak. Traffic may also back up on State Street if vehicles seeking to enter the staging area are blocked by train arrivals and departures. However, major traffic congestion is not anticipated and delays associated with off-loading traffic during this time are not expected to be intolerable. Current peak hour traffic volumes for State Street in the vicinity of the railroad tracks range between 414 (A.M.) and 534 (P.M.) vehicles per hour, below the road's capacity. It should also be noted that potential traffic problems pertaining to the municipal pier location will be temporary in nature because of the interim status of the site.

Conditions in Greenport, on the other hand, present potentially serious traffic problems in the event Mascony operates from its proposed site between First and Third Streets. While there is a lack of specific data necessary to perform a detailed analysis of the traffic impact of the proposed service upon Greenport, certain qualitative evaluations can be made and are the subject of the following discussion.

[15/] Source: New London Redevelopment Agency.

In view of the fact that access to the ferry slip from Third Street is blocked by the lack of an easement across the property of the East End Supply Company, Front Street eastbound traffic must use the 55-foot alley between the Post Office and Mitchell's Restaurant to reach the primary ferry staging area. This alleyway is of sufficient width to accommodate the turning radii of the vehicles using it. While there may be sufficient storage space in the primary staging area for most sailings, passengers wishing to leave their cars behind would most likely park at one of Mascony's Third Street parcels.

Much of the traffic landing in Greenport will exit by way of First Street proceeding north. Such traffic would then probably continue along First Street until its end at Main Street and then take Main Street to reach County Route 27, an east-west oriented road north of the village. All commercial and the remaining automobile traffic will be routed out through the 55-foot alleyway, with the bulk of these vehicles making left turns onto Front Street westbound.

Front Street in the vicinity of the proposed ferry landing site carries two-way traffic with two parking lanes in 33 feet of cross section. While no definitive breakdown of this cross section was available, photographs indicate each of the two travel lanes to be approximately 9.5 feet wide and the parking lanes 7 feet wide. First and Third Streets are both approximately 50 feet wide and accommodate two-way traffic with two travel and two parking lanes.

Calculation of the actual volume capacity on Front Street is difficult since narrow lanes, two-way traffic, parking, and frequent turns are all physical or operational factors which detract from optimum capacity.[16] However, NYS Route 25, from NYS Route 114 to Main Street, has been assigned a design hour level of 330 vehicles by the Traffic Section of the New York State Department of Transportation, Region 10 Planning and Development Division.[17] Although more vehicles can be accommodated at lower levels of service, such levels result in lower operating speeds, traffic stoppages, and other congestion-related problems, including accidents. A Traffic Study for the Village of

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[16] See *Highway Capacity Manual*, supra.

[17] This corresponds to estimates of the capacity of Front Street "with a decent level of service" made by the Suffolk County Traffic Safety Department.

Greenport performed by the Suffolk County Traffic Safety Department in October 1974 shows traffic volumes on Front Street during August reaching levels of between 380 and 400 vehicles per hour. The Study describes traffic conditions at this time as congested and such levels may reflect an approximation of the ultimate capacity of Front Street. These high levels of traffic contribute to the occurrence of the majority of traffic accidents in the village on Front Street at the intersections with Main, First, Third, and Fifth Streets,[18] in the area of Mascony's proposed ferry landing.

The traffic counts taken by Suffolk County in its study are purported to be typical of summer weekends and are alleged not to be significantly different from summer weekdays. These counts show a midday peak with the design hour volume being exceeded between 10:30 A.M. and 6:00 P.M. The traffic problems in Greenport are most prevalent in the summer months, with off-season levels approximating half of those reached in the summer peak season. The major problem areas are located east of Third Street in the business district, with traffic flow problems diminishing west of this intersection.[19]

During periods of peak ferry demand, it is likely that a significant portion of Front Street eastbound traffic would consist of vehicles destined to the ferry site. At Mascony's projected average of 60 percent capacity during the peak season an average of between 50 and 60 vehicles would be destined for the ferry staging area with numerous other vehicles moving toward the passenger-only parking areas. Through adequate signing many of the latter could be diverted off of Front Street at Fourth and by way of Wiggins to the parking area at Third and Wiggins. However, by so doing Mascony runs the risk of interfering with Shelter Island Ferry traffic in the area.

A 60 percent capacity load on the Greenport would consist of 60 vehicles or 18 percent of the design hour volume eastbound on Front Street. However, for a highway situation similar to Front Street, the number of right turns which must be made into the 55-foot alleyway will have the effect of reducing the highway capacity. If capacity at service level D is assumed to be 330 vehicles on Front Street, this reduction for 60 vehicles would be by an estimated 8 percent (i.e. 330 to 304).[20] For those times when the Greenport is operating at full capacity, the capacity of Front Street would be reduced by an estimated 15 percent, to 280. The 100 vehicles would then represent approximately 36 percent of the road's capacity.[21]

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[18] Comprehensive Development Plan for the Town of Southold, Village of Greenport, Part 1, following p. 49.

[19] Source: Suffolk County Traffic Safety Department.

[20] Source: Highway Capacity Manual, *supra*. Table 6.4.

Traffic exiting from the ferry onto First Street would reach volumes similar to traffic approaching on Front Street and would have to compete with Front Street traffic at a non-signalized intersection (although Mascony has proposed to station attendants at this intersection the Village of Greenport has challenged its authority to do so). The use of the 55-foot alleyway by exiting traffic making a left turn onto Front Street westbound would result in stoppage of both lanes of traffic on the street during any period of heavy traffic flow.

In view of the fact that Wiggins is one way eastbound, cars parked in one of the Third Street parcels must exit by way of Third Street, entering the traffic stream with vehicles using the Shelter Island Ferry. In addition, the traffic on Third would be competing with the traffic on Front Street at their signalized intersection.

Table 2 shows the proposed summer schedule of Mascony with corresponding traffic volumes at the Third Street - Front Street intersection for a "typical" summer weekend. It should be noted that should Commission approval be granted for the proposed service, the Commission will have no control over its scheduling.

Two ferry events, the 11:15 A.M. departure and the 5:30 P.M. arrival, appear to present potentially the most serious traffic problems for Greenport with two other events posing additional difficulties. At the time of the 11:15 departure, Front Street traffic moving eastbound already exceeds the design hour volume during the summer months. In view of the fact that this departure may generate greater than average demand because it is the only one scheduled during midday, 100 or more vehicles could be injected into an already congested traffic stream as a result of the ferry. This increase in volume would be accompanied by a concomitant decrease in highway capacity due to the large number of right turns onto the 55-foot alleyway. This situation should create severe congestion problems beyond those which already exist.

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[21] Although Mascony has expressed a willingness, in conversations with Environmental Staff members, to limit trips to 50 percent of capacity in peak season, such a proposal does not appear to be feasible. Not only would such a plan alienate customers, but it would fail to alleviate traffic congestion caused by cars destined to the ferry landing. In fact, there may be an even more adverse impact if these cars are turned back onto Front Street instead of boarding the ferry.

TABLE 2

Mascony Proposed Schedule		Hourly Volumes			
		Front Street		Third Street	
Ferry Leaves	Ferry Arrives	Eastbound	Westbound	Northbound	Southbound
6:00 A.M.	--	30	17	10	5
--	7:30 A.M.	150	90	30	13
8:15 A.M.	--	206	128	40	20
--	9:45 A.M.	295	210	80	60
11:15 A.M.	--	360	270	110	85
--	5:30 P.M.	320	360	135	60
7:15 P.M.	--	270	270	115	45
--	8:45 P.M.	245	250	112	40

Source: Traffic Study, Village of Greenport, Suffolk County Traffic Safety Department (1974).

At the time of the 5:30 ferry arrival, Front Street traffic approaches or exceeds levels indicative of congestion in both directions. The extent of existing traffic levels severely limits the ability of a substantial number of vehicles, particularly trucks, to execute left turns from the 55-foot alleyway onto Front Street westbound. Most traffic leaving the ferry staging area would consequently have to either make right turns onto Front Street from the alleyway or exit by way of First Street. The former alternative would add to existing congestion problems on Front Street as would the latter since First Street traffic will be competing with Front Street traffic at a non-signalized intersection. The proposed use of attendants by Mascony to direct traffic across the First-Front intersection would result in traffic stoppages along Front Street. Alternatively there would be serious problems in dispersing the ferry patrons.

It should be pointed out that demand already often exceeds the capacity of Front Street. At such times ferry traffic would have to compete with existing attractions. Therefore all those seeking to use the ferry or seeking to reach other attractions may not be accommodated by the existing street system, resulting in potentially adverse effects to both due to decreased accessibility.

The 9:45 A.M. arrival and the 7:15 P.M. departure present additional problems. The traffic on Front Street at these hours is heavy. In view of the fact that some vehicles can be expected to arrive early for the 11:15 A.M. and 7:15 P.M. departures, the ferry will be generating both arrival and departure traffic within an hour and a half of each other in one case and an hour and 45 minutes in the other. At times of peak ferry occupancy, this could have the serious cumulative effect of adding approximately 180 vehicles during these time frames to the already congested downtown area.

It is possible that some portion of the traffic intended for the ferry would enter town by way of County Route 27 to Main Street and move south to Front Street. Access to the ferry landing site would then be by way of right turns onto Front Street and left turns into the alleyway while access to the parking areas would be by way of left turns onto Third Street. The increased number of turns would tend to add to the traffic congestion of westbound Front Street. Another factor to consider is that in times of over-demand (more than 100 vehicles attempting to use the ferry for the same crossing), vehicles approaching the access alleyway to the staging area after this area has reached capacity will stop or slow down, further impeding the flow of traffic.

During the off-season, traffic volumes in downtown Greenport are considerably lower. The above-mentioned adverse impacts of the proposed ferry service on local traffic conditions will, consequently, substantially diminish although concentrated surges of traffic from ferry traffic may cause momentary delays.

Other traffic-related considerations involve the physical condition of the streets themselves. The village has its own water and sewer systems with installation of sewer pipes on First Street dating back to 1903. The sewer pipes, constructed of vitrified clay with cement joists, are less than 3 feet from the road surface in areas of First Street near Front. There is some concern that heavy truck traffic over the Village's macadam streets, particularly First Street, could result in excess subsurface loads and vibration which may cause the sewer pipes to rupture.[22/] Rupture of these pipes would result in the discharge of untreated sanitary sewage into the surrounding area with the possibility of overflow to the street surface. This risk has been reduced to some extent by Mascony's proposal to divert commercial traffic away from First Street when leaving the staging area. Inasmuch as Front Street has a concrete base, the increased traffic is not expected to create any pipe rupture problems with respect to it.

It should be noted that the above discussion is based on the capacities of the involved streets in their present configuration. The Comprehensive Development Plan recommends widening and realigning certain streets in the downtown area and restricting on-street parking on Front Street in order to improve downtown traffic flows. In addition, a traffic study conducted by the Automobile Club of New York at the request of the Village in 1961 recommends institution of a one-way traffic system in the downtown area. An example of how traffic flow could be improved would be to divide Front Street into two 11-foot travel lanes and an 11-foot parking lane which would serve as a turning lane near intersections. In view of Greenport's expressed interest in attracting tourist and vacationer-related activity into the Village, some improvements in downtown traffic flow would appear to be necessary. The Village Planning Board is in the process of preparing a traffic flow study which will be presented to the Village Board of

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[22/] Source: Letter from Holzmacher, McLendon & Murrel, P.C./Consulting Engineers to Mayor of Greenport, dated April 21, 1975.

Trustees for approval sometime in 1976. At an informational hearing held recently to assist the Planning Board in formulating a traffic plan, the business community opposed the institution of one-way traffic flows on the ground that traffic would move too rapidly as a result of such a configuration. Opinion was more favorable to removing parking from Main Street than from Front Street, coupled with the development of off-street parking facilities adjacent to business establishments. To the extent that techniques are employed to increase the capacity of streets in the downtown area, the adverse impacts on traffic congestion associated with the ferry would be mitigated. However, the willingness of the Village to make major changes in traffic configuration at this time is questionable.

The institution of the proposed ferry service will have the beneficial impact of easing traffic congestion in the New York City to New London corridor. However, in view of the high daily traffic volumes in this region, particularly in the New York City area, the amount of traffic diverted to the ferry will only have a minor effect on existing conditions.

B. Energy

The proposed service probably will have a beneficial impact on fuel conservation inasmuch as tractor trailers and passenger vehicles using the ferry should save more fuel than Mascony's vessels will utilize in performing the service. Mascony's primary vessel, the Cape Henlopen, consumes 120 gallons of diesel fuel per hour at cruising speed. Fuel consumption during idling is approximately 45 gallons per hour. Therefore, each round trip will utilize approximately 405 gallons of fuel (figuring 3 hours cruising time and 1 hour idling during unloading and loading). The Cape Henlopen's engines will be shut down when not in use and restarted one-half hour before departure. Under Mascony's plan of operation, the Cape Henlopen will be making 626 roundtrips annually. These trips will consume approximately 253,530 gallons of fuel. Taking into consideration an estimated 182 hours of start-up time unrelated to loading, an additional 8,212 gallons of fuel will be consumed. The Greenport, a steam-powered vessel, consumes 360 gallons of diesel fuel per hour during cruising and 70 gallons per hour during idling.[23/] Based on consumption of 1,150 gallons of fuel per round trip (for

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[23/] Although testimony adduced at the hearing indicated that the Greenport consumed 120 gallons per idling hour, this figure was based on firing both generators during idling instead of one as Mascony has proposed.

132 round trips a year), the Greenport will utilize 151,800 gallons during actual operations. As with the Cape Henlopen, the Greenport's boilers will shut down overnight or when not otherwise in operation. The boilers would have to be fired 1 1/2 hours before starting to build sufficient pressure. This will result in consumption of an additional 4,600 gallons, making a total of 170,260 for the year. The two vessels combined, therefore, will consume approximately 432,000 gallons of fuel annually, assuming they remain in service. If the backup vessel Cape May is put into service to replace the Greenport, fuel consumption will remain essentially unchanged. If it replaces the Cape Henlopen, however, fuel consumption will increase.[24/]

Quantification of the amount of fuel which would be saved by diverting vehicles from the highways to the ferry is difficult. The first problem encountered in making such a calculation is the lack of certainty regarding the origin and destination of potential ferry patrons. The 1972 survey conducted by the Connecticut Department of Transportation demonstrates the dispersion of origin and destination points in the New England region. Although 95 percent of the vehicles boarding the Orient Point ferry at Orient Point in June 1972 originated their trips in New York, only 37 percent of those boarding in New London showed Connecticut origins. Thirty-nine percent of such vehicles originated in Massachusetts, 13 percent in Rhode Island, and approximately 9 percent from other points outside New York. The destinations of those disembarking in New London were similarly dispersed, with 36 percent of the traffic destined to points in Massachusetts, 31 percent moving to points in Connecticut, 12 percent bound for Rhode Island and 15 percent destined to points in other states. On the other hand, 93 percent of the vehicles boarding in New London had destinations in New York.

Another factor complicating the quantification of vehicle fuel consumption in the absence of the ferry is the sporadic nature of ferry riding habits. Unlike a commuter train or bus service, the bulk of the involved ferry trips are expected to be for social or recreational purposes with the vast majority of customers riding the ferry less frequently than once a month. Regular ridership patterns will, therefore, be extremely difficult to ascertain.

[24/] Mascony proposes to convert its steam-powered vessels, the Greenport and Cape May, to diesel should the application be granted. This would result in a general reduction in fuel consumption and, consequently, an increase in the magnitude of beneficial energy impacts.

Even if 200 miles, the highway distance between Greenport and New London, is arbitrarily assumed to be the length of the average trip for potential ferry users, actual fuel savings resulting from riding the ferry still cannot be calculated with any assurance. If there was no existing ferry service across the Sound and all potential Mascony users would otherwise have made the trip over the highways, it is obvious that substantial fuel savings would result from the availability of the ferry. Taking Mascony's projection of 66,385 spaces sold annually (which, based on an estimated ratio of 19 car spaces to 1 truck space, would amount to 63,066 automobiles and 3,319 commercial vehicles) annual fuel consumption without the ferry service would be approximately 1.03 million gallons.[25/] Therefore, the total fuel conserved by diverting Mascony's projected vehicle traffic from the highways would be approximately 600,000 gallons annually. However, actual conditions impair the utility of this figure. In actuality, Mascony will attract many vehicles that would otherwise have utilized existing ferry service, as well as other vehicles which may not have made the trip at all under existing conditions. To the extent that traffic is diverted from the Orient Point ferry to Mascony, fuel savings will be very minimal, with vehicles originating or destined to western Long Island or the New York City area saving only the amount of fuel needed to travel the 8 miles between Greenport and Orient Point. Furthermore, the ferry may create a demand for itself, attracting passengers who may not have even made the trip without the services of an additional ferry available. To this extent, institution of the proposed service may stimulate vehicle trips and the resultant fuel consumption. On the other hand, the availability of the ferry may encourage potential travelers to leave their automobiles behind and ride the ferry as passengers. Thus, although the proposed service is likely to have a beneficial impact on energy consumption, it cannot be conclusively deemed significant, particularly in view of the total fuel consumed in the New York/New England area annually.[26/]

[25/] This figure is based on Environmental Protection Agency average fuel consumption figures of 14 miles per gallon for passenger automobiles and 5 miles per gallon for commercial vehicles.

[26/] Over 6.2 billion gallons of motor fuel were consumed for highway purposes in New York State in 1973. In Massachusetts, Connecticut and Rhode Island, the three New England States from which ferry traffic is most likely to be drawn, total highway motor fuel consumption exceeded 4.2 billion gallons in 1973. Source: United States Department of Transportation, Federal Highway Administration, Highway Statistics, 1973. The projected fuel savings attributable to the ferry, even if the liberal figure of 600,000 gallons is assumed, would represent less than one-hundredth of one percent of this total.

C. Air Quality.

In view of the lack of heavy industry and predominantly agricultural land use, air quality for the town of Southold is excellent.[27] Suspended particulate and sulfur levels are low, the only potential problem being with settlable particulates such as blowing sand. While the inauguration of the proposed ferry service would lead to an increase in carbon monoxide, sulfur dioxide, hydrocarbons, and nitrogen oxide levels in Greenport and its vicinity due to the rise in vehicular traffic, the impact on ambient air quality in the Village is not expected to be significant.

In New London, levels of particulates, sulfur oxides, carbon monoxide, and nitrogen oxides are all less than national standards. There is a problem in Connecticut with photochemical oxidants, however, attributable largely to hydrocarbons which are emitted by automobiles. The standard of 105 parts per million (ppm) was exceeded during 30 percent of the days between May and September 1975 inclusive, reaching maximums of as much as 25 ppm in nearby Groton.[28] High hydrocarbon levels are dependent largely on the number of vehicle miles traveled in the State and are primarily an area-wide rather than local problem due to the broad dispersion of hydrocarbons throughout the ozone layer. Therefore, by reducing the number of vehicle miles traveled on State highways the ferry would have a slight beneficial impact on photochemical oxidant levels. To the extent the ferry generates traffic which would not otherwise be using the highways, it will contribute to the problem. However, concentration of vehicular traffic in Mascony's proposed staging areas could result in carbon monoxide emissions which exceed the National one-hour standard of .040 g/m^3. At Greenport, automobiles and trucks will be staged in an area of approximately 8100 square feet. During the summer, the period of peak demand for ferry service, the average wind in Greenport comes from the west at about 10 miles per hour and the average temperature is 75° F. At stability class E, which assumes a worst case situation, concentrations of CO would exceed National one-hour standards under certain conditions, depending primarily upon the number of vehicles running their motors simultaneously over the course of an hour. (See Table 3). Thus, in almost all instances will standards be exceeded in the immediate vicinity of this

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[27] Source: New York State Department of Environmental Conservation, Air Resources Division.

[28] Source: Connecticut Department of Environmental Protection, Air Compliance Unit.

TABLE 3

ESTIMATED CARBON MONOXIDE EMISSIONS AT PROPOSED GREENPORT STAGING AREA
(NATIONAL ONE-HOUR STANDARD = .040 g/m^3)

	A		B		C	
N	5 mph	Idle	5 mph	Idle	5 mph	Idle
10	.036*	.053	.020	.029	.013	.019
20	.071	.105	.039	.057	.025	.037
30	.107	.158	.059	.086	.038	.057
40	.142	.210	.077	.114	.049	.073

N = Number of Cars in operation simultaneously
A = Observer at 0 feet
B = Observer at 45 feet (east)
C = Observer at 90 feet (east)

*Estimated emissions of CO in g/m^3

area. However, the further the distance from the source the less frequently the standard is violated. Concomitantly, the greater the number of cars in operation at a single time, the greater the possibility that the standard will be exceeded. It is not known how many cars would be running at the same time in the staging area after unloading or while waiting to board. However, if Mascony is able to keep the number under 20 through the use of signs and/or attendants, the impact upon air quality, while adverse, should not be significant. Even at those times when the standard is exceeded, the impact will be of short intermittent duration, affecting only a small area within the village. Emission impacts in the New London Bank and Sparyard staging area, based on similar wind speeds and temperatures at stability class D, would not be significantly different (See Table 4). Increased traffic on Front Street should not result in violation of the one-hour standard. Assuming that 30 cars move continuously on Front Street between Third and First for one hour at 5 mph, the one-hour concentration of carbon monoxide at Front and First would be .017 g/m^3, considerably below the one-hour standard of .040 g/m^3. In view of the anticipated lighter congestion at New London, one-hour concentrations there should be even lower.

Emissions from the ferry engines should not present a problem. Emission factors for oil-burning steam and diesel electric engines for inboard vessels are presented in Table 5. In view of the limited number of ferry trips per day, the impact on air quality both over the Sound and in the involved ports will not be significant. Ferry emissions while crossing the Sound should be easily dispersed.

Finally, by providing a water route between New England and Long Island, the ferry will eliminate the need for many vehicles to traverse the congested New York City area in order to reach their ultimate destinations. While this will be beneficial to air quality in the region, the quantitative impact will be extremely minimal in view of the high existing levels of pollutants and the minute percentage of total area traffic which stands to be diverted.

D. Water Quality

The water quality in New London Harbor, including the Shaw's Cove area, has been classified as "SC" by the Connecticut Department of Environmental Protection with the

TABLE 4

ESTIMATED CARBON MONOXIDE EMISSIONS AT PROPOSED PERMANENT NEW LONDON STAGING AREA
(NATIONAL ONE-HOUR STANDARD = .040 g/m^3)

	A		B		C	
N	5 mph	Idle	5 mph	Idle	5 mph	Idle
10	.032*	.048	.015	.023	.010	.015
20	.065	.096	.031	.046	.020	.029
30	.097	.144	.046	.069	.030	.044
40	.129	.191	.061	.091	.039	.058

N = Number of Cars in operation simultaneously
A = Observer at 0 feet
B = Observer at 45 feet (east)
C = Observer at 90 feet (east)

*Estimated emissions of CO in g/m^3

TABLE 5

EMISSION FACTORS FOR INBOARD VESSELS
EMISSION FACTOR RATING: D

Pollutant	Steamships[a]				Motorships[b]			
	Underway		In-berth		Underway		In-berth	
	lb/mi	kg/km	lb/day	kg/day	lb/mi	kg/km	lb/day	kg/day
Particulate	0.4	0.098	15	6.8	2	0.49	16.6	7.5
Sulfur dioxide[c]	7S	1.71S	300S	136S	(SO_x) 1.5	0.37	43	19.5
Sulfur trioxide[c]	0.1S	0.02S	4S	18S	-	-	-	-
Carbon monoxide	0.002	0.0005	0.08	0.036	1.2	0.29	46	20.8
Hydrocarbons	0.2	0.05	9	4.1	0.9	0.22	33	14.9
Nitrogen oxides (NO_2)	4.6	1.13	200	90.7	1.4	0.34	50	22.7
Aldehydes (HCHO)	0.04	0.01	2	0.9	0.07	0.017	2.6	1.2

[a] Based on fuel consumption data and emission factors for fuel oil.

[b] Based on fuel consumption data and emission factors for diesel fuel.

[c] S=weight percent sulfur in fuel; assumed to be 0.5 percent for diesel.

Source: Environmental Protection Agency, Compilation of Air Pollutant Emission Factors, April 1973.

intent to eventually reach "SB" status.[29] The water quality around Greenport is generally good, although the Harbor is closed to shellfishing.

The main threats which the ferry will pose to water quality involve possible discharges of sanitary wastes, oil, litter, bilge and wash water, and the possibility of thermal pollution.

Mascony will install holding tanks in its vessels and pump the waste discharge either into its own self-contained tanks equipped with a filter system or directly into the municipal sewer system at New London. After the waste passes through Mascony's tanks it would only be pumped back into the New London harbor if the discharge was of a quality capable of meeting applicable State and Federal standards. Otherwise, the discharge will be pumped into the sewer system. Mascony will use fresh water as a flushing medium and plans to utilize approximately 3 gallons per passenger. The largest strain on the New London Sewage Treatment Plant will be during the summer peak when Mascony anticipates attracting 150,000 passengers, one-half of its total annual volume. At this time the discharge into the New London sewer system would be approximately 1,700 gallons per round trip or 6,800 gallons each day. The New London Sewage Treatment Plant has a design capacity of between 3.0 and 3.5 million gallons per day. However, average flows now exceed capacity during times of peak ferry service, ranging between 3.63 million gallons per day in August and 4.48 million gallons daily in May. Despite the fact the plant's design capacity is regularly exceeded, the only danger of overflow occurs in the spring, a period during which Mascony's contribution to the daily flow would be much less than the peak average of 6,800 gallons per day. The New London Sewer Authority indicates that the increase in flow attributable to Mascony's operations, even during peak periods, would be nominal.

As with sanitary wastes, the litter problem will be a function of ridership and thus is expected to be most serious in the summer. Inasmuch as the snack bars on

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[29] Class "SC", which is one level above unacceptable, is described as suitable for fish, shellfish and wildlife habitat; suitable for recreational boating and industrial cooling and of good aesthetic value. Class "SB" is suitable for bathing, other recreational purposes, industrial cooling and shellfish harvesting for human consumption after depuration. It is also an excellent fish and wildlife habitat and of good aesthetic value.

Mascony's vessels will be indoors and are equipped with sitdown eating facilities, litter in the Sound and Harbors should not be significant.

Under the Federal Water Pollution Act and the Water Quality Improvement Act it is illegal to discharge oil from any vessel into or upon the navigable waters of the United States. Federal pollution control regulations require a holding tank with sufficient capacity to contain fuel wastes and a piping system to pump such wastes to a shoreside facility or discharge point. Mascony's holding tanks will be of sufficient capacity to contain such wastes and a pumping system will be put into operation.

Accidental oil spills are a possibility with any ferry operation. Inasmuch as Mascony is applying for an initial operating certificate, there is no indication of how effective its spillage control procedures will be. However, if it is assumed that Mascony will use ordinarily prudent care in avoiding fuel spillages, the threat to water quality should be minimal. There should be no thermal pollution problems with Mascony's steam-powered vessels since their engines would be water-cooled and surrounding water temperatures would not be significantly raised.

Although there may be temporary increases in turbidity due to installation of dolphins and bulkheads and backfilling in Mascony's ferry slips, the impact will be only minor and short term. It should be noted, however, that steel sheet pilings may alter the movement of ground water, thereby modifying adjacent water tables. The Connecticut Department of Environmental Protection has certified that Mascony's proposed New London improvements (as originally set forth with dolphins extending into the secondary channel) will not permanently violate Connecticut's water quality standards. Mascony's revised plan should have a similar non-adverse impact. The New York State Department of Environmental Conservation has issued Mascony a Tidal Wetlands Permit, Steam Protection Permit and Water Quality Certification based on its revised operating proposal in Greenport. It was found in the Department's report granting the above permits and certification that the underwater lands to be disturbed by pile driving operations for dolphin installation will be entirely beneath tidal waters and that no wetland vegetation or marsh areas will be endangered. Roiling of the water during installation will only be temporary and in the immediate vicinity of the dolphins. The State Department of Environmental Conservation has further concluded that the Greenport project will not cause unnecessary damage to the State's waters.

E. Historic

There are numerous historic sites in New London listed in the National Register of Historic Places (see Table 5). Of these sites, only the Customhouse and the Railroad Station are located in the immediate area of Mascony's two proposed ferry landing sites. The Railroad Station, located at the foot of State Street directly opposite the municipal pier, was constructed in 1887 and has been attributed to the noted American architect Henry Hobson Richardson.[30/] Present plans call for the Romanesque Revival structure to be converted into commercial space and a restaurant with Amtrak continuing to utilize space for passenger operations. Use of the municipal pier for the proposed service will not block access to the station, there being sufficient space to stage and store vehicular traffic, and existing streets should adequately handle the extra volume. The inclusion of the Mascony ferry in the multi-modal transportation terminal planned for the New London waterfront will enhance tourist access to this historic site as will the planned rejuvenation of the waterfront in general. In conjunction with these plans, certain renovations to the station building and the immediate area are already being undertaken. The Customhouse, constructed in 1833 by the notable architect Robert Mills is located in the Shaw's Cove area on Bank Street. Renovation of the area will show this site off to better advantage as blighted buildings are torn down or rehabilitated and Bank Street is widened. Institution of the proposed service will increase tourist access to the site from the water. Although Bank Street will become more congested until it is widened, the thoroughfare should be sufficient to permit adequate access to the Customhouse by automobile.

The Connecticut State Historic Preservation Office indicates that Bank Street itself may be eligible for inclusion in the National Register of Historic Places. The De Noia Bros. Furniture Store (otherwise known as Bassett House), a 3-story stone residence of the Federal style built in 1836, is listed on the Connecticut Statewide Inventory of Historic Resources. This building, located on Bank Street, stands on the property which Mascony proposes to use as its permanent staging area. The City Redevelopment Agency has indicated its desire to maintain and rehabilitate this structure and

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[30/] Source: United States Department of Interior, National Park Service, Historic Railroad Stations (1974)

TABLE 6

NEW LONDON HISTORIC SITES

Site	Location
Nathaniel Hempstead House (Old Huguenot House)	Corner of Jay, Hempstead, Colt, and Truman Streets
Deshon-Allyn House	613 Williams Street
Joshua Hempstead House	11 Hempstead Street
Monte Cristo Cottage (Eugene O'Neill House)	325 Pequot Avenue
New London County Courthouse (State Courthouse)	70 Huntington Street
New London Customhouse	150 Bank Street
New London Public Library	63 Huntington Street
Shaw Mansion	11 Blinman Street
Whale Oil Row	105-119 Huntington Street
Fort Trumball	Fort Neck
New London Railroad Station	Foot of State Street
Thames Shipyard	West bank of Thames River, north of Coast Guard Academy
Williams Memorial Building Institution*	110 Broad Street

* Eligible Site

Source: National Register of Historic Places

Mascony proposes to restore it and utilize it as a combination ticket office and waitin station for ferry patrons. Applicant does not contemplate demolishing any other buildin on Bank Street. The instant proposal, therefore, would have no adverse effect on historic resources in New London.

There are no sites in the National Register of Historic Places listed for Greenpo or its environs. However, the Greenport Nature Study Area, located north of NYS 25 and west of the downtown area, has been recommended as a potential natural landmark under the Natural Landmarks Program administered by the National Park Service of the U.S. Department of Interior. The Study Area is described as an exceptionally fine example of a mature upland hardwood forest and the only known area where the Crane Fl Orchid can be found. Marbled, tiger and spotted salamanders, all of which are endange in Long Island, also inhabit the Study Area.[31/] The only potential impact which the ferry might have on this area would be the facilitation of exposure of the area to a greater number of people. The danger from overuse of the area by the masses should be slight, however, since a large percentage of ferry patrons are expected to spend only a minimal amount of time in the Village.

F. Safety

Potential safety problems with the proposed action exist both on land and in the water. The proposed ferry landing at Bank and Sparyard Streets in New London necessitates access over the ConRail mainline tracks by means of a private grade crossing which is currently not protected by any fail-safe signal. Twenty-six scheduled passenger trains and four freight trains move over the track daily. Although westbound trains have an unobstructed view of the crossing 1,200 feet before they approach it, the crossing is located 120 feet from the end of a sharp curve for eastbound trains whose view of the crossing is obstructed by an old warehouse building located on the dock side of the tracks. The authorized maximum speed for trains moving over the crossing is 25 miles per hour.

In conjunction with Mascony's application to change the use of, widen, and insta an automatic protection device over the crossing, a hearing was held on this matter

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[31/] Source: Smithsonian Institution, Survey of Natural Areas of the Atlantic Coast Plain - Ecological Themes (1974).

before the Connecticut Public Utilities Commission (PUC) on May 30, 1975. However, the PUC did not resolve the safety issue and dismissed the application without prejudice in light of the denial of applications by this Commission and the State Department of Environmental Protection.

In view of the frequency of train arrivals at the New London station, scheduling around them, particularly during the summer peak, would be difficult. Potential dangers can be mitigated, however, by installation of fail-safe crossing signals and the strategic stationing of attendants along the tracks to keep the tracks clear.

The view from the tracks approaching the station adjacent to the municipal pier is relatively unobstructed and a fail-safe protection device is already in place at the public grade crossing. Mascony also plans to station attendants at the crossing.

The increase in traffic congestion in Greenport, particularly the increase in the number of left turns being made by traffic exiting the ferry onto Front Street, is likely to result in an increase in automobile accidents in an area which is already the most accident-prone part of the village. The possibility of accidents would also increase at the potentially dangerous intersection of Webb, First, and Main Streets. Furthermore, stoppage of traffic on Front Street may block access to the Shelter Island ferry by way of Third Street for ambulances needed on Shelter Island. Shelter Island lacks hospital facilities and must depend on ambulances being ferried over from Greenport to answer emergency calls. However, alternate means of access to the Shelter Island ferry would still be available through Wiggins and Fourth, Fifth, or Sixth Streets.

Another safety issue of potential importance is the ability of Mascony's vessels to navigate in Greenport Harbor without endangering fishing or pleasure craft. Small craft activity in the harbor is high during the summer months and collisions between such boats and Mascony's vessels are possible. However, if reasonable care is taken to observe the navigational "rules of the road", the danger to fishing or pleasure craft should not be serious.[32]

G. Socio-Economic

The Greenport Planning Board alleges that the increased vehicular traffic generated by the institution of Mascony's service will have an adverse impact on the Village's development insofar as increased congestion in the downtown area may discourage regular seasonal tourists or inhabitants of nearby villages from visiting Greenport to vacation or shop. The Board further contends that ferry users will view the village merely as a ferry terminal and will quickly pass through town on the way to their ultimate destinations. While it is true that many ferry patrons will view Greenport in this way, it is also likely that many others will probably take the time to patronize village retail establishments before boarding or after disembarking. The enhanced accessibility of downtown Greenport to New England tourists may well have a stimulating impact on the town's economy, although it is also possible that the presence of the ferry in Greenport Harbor may discourage fishing and pleasure boating activity during ferry arrivals and departures. Concomitantly, tourism in New England and Eastern Long Island in general should be stimulated by an additional ferry link between the two regions.

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[32] United States Coast Guard, Marine Safety Division.

The inauguration of an additional ferry service may also be beneficial to Long Island potato growers by expanding their markets into New England. By decreasing transit times and reducing fuel costs, the ferry will allow goods to be transported more efficiently and tend to promote commerce between New England and Long Island.

The presence of the ferry in New London would assist that City's effort to rehabilitate its waterfront. Since most of the land in New London is already developed, economic growth in the city will depend largely upon more intensive development of this land. Renewed commercial use and development of waterfront property such as that proposed by Mascony would have a beneficial impact on economic growth within New London.

Institution of the proposed service will also result in a small increase in employment inasmuch as Mascony will employ between 12 and 26 crewman during the course of each year. It should be noted that this impact will be minimized in the event increased competition forces Cross-Sound to cut back or discontinue its Orient Point service.

H. Aesthetics

The Village of Greenport projects a charming, fishing village ambiance with its narrow streets, pleasure and fishing boat marinas, and large old houses. The increase in passenger and commercial vehicles generated by the Mascony ferry and its attendant congestion will tend to diminish appreciation of these aesthetically-pleasing qualities in the downtown area. Furthermore, Mascony's large vessels will be incongruous with the aesthetics of the waterfront itself.

The aesthetic impact on New London, on the other hand, will be minimal. The harbor area houses several other commercial ferry vessels in the general vicinity and the aesthetics of the area are poor. To the extent that granting the application results in the demolition of unsightly commercial buildings in the Shaw's Cove area, there will be a slight beneficial effect on the area's aesthetic values.

I. Noise

The increase in vehicular traffic generated by the ferry will result in a rise in ambient noise levels in New London and Greenport during the periods surrounding ferry arrivals and departures. Noise levels resulting from more than one source at a point are obtained by adding logarithmically. For example, while one source may emit a noise level of 50 decibels, two sources of this magnitude would produce a combined noise level of 53 decibels and three sources would result in a noise measurement of about 54.8 decibels. Therefore, the more sources that are introduced, the lower the incremental contribution will be from any new source.[33] Consequently, a very significant noise intrusion would be required to substantially change current ambient levels. However, the increase in traffic congestion in downtown Greenport may result in the spreading of downtown noise levels to areas further west on Front Street. Concomitantly, diversion of traffic from the highways between New York City and New England will result in immeasurable reductions of ambient noise levels in this corridor.

Insignificant noise intrusions will result from the sound of the ferry's engine and its whistle (if blown) as well as from the short-term pile driving of dolphins.

J. Wildlife

The proposed operation will have no impact on the shellfish, primarily scallops and oysters, which are found in the waters off Greenport. The area encompassing the Harbor is closed to shellfishing in view of the existing sources of bacteria already present while the water beyond the harbor area is so deep that the shellfish beds on the bottom will not be disturbed by vessels with the size draft possessed by Mascony's ferries.[34]

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[33] It should be noted, however, that loudness increases exponentially as decibels increase arithmetically. Sixty decibels may, therefore, be twice as loud as 50. However, at current levels of traffic in downtown Greenport, the additional noise generated by ferry traffic will not be significant.

[34] Source: New York State Department of Environmental Conservation, Region 1, Water Quality Unit.

The northeast corner of Mascony's Bank and Sparyard Street pier contains an exposed mud flat that gradually slopes to a depth of about 8.5 feet. In the slope, a healthy stand of eel grass was found during field inspections conducted by the Connecticut Department of Environmental Portection in July 1973, and May 1974. Sea lettuce, rockweed, and blue green algae was also prevalent on rocks and an abundance of barnacles was attached to the old pilings, rocks and pier structure. Invertebrates, including polychaetes, nereids, scale worms, amphipods, green crabs, and possibly oligochaetes, are prese[illegible]long various portions of the pier. Fourteen varieties of fin fish, including bluefish, winter flounder, and smelt, have also been identified as utilizing the area around the pier. Restoration of the existing bulkhead would provide a habitat to a wider variety and number of marine organisms.[35/] It should be noted that analysis of water quality and marine life impacts resulting from restoration and installation activities in both Greenport and New London should be presented in greater detail in environmental studies to be conducted by the Corps of Engineers as a prerequisite for action on Mascony's application for Corps permits.

IV. ALTERNATIVES TO THE PROPOSED ACTION

In accordance with the full disclosure aspects of NEPA, reasonable alternatives to the proposal will be presented below even though in some instances Commission jurisdiction may be limited. It should be noted at the outset that section 309 (d) of the Interstate Commerce Act prohibits the Commission from restricting the right of a water carrier to add to its equipment, facilities, or service within the scope of a certificate, as the development of the business and the demands of the public shall require.

A. No action

The no action alternative, which entails denial of the application, would serve to maintain the status quo. Automobiles and trucks seeking to travel between New England and Long Island would either have to utilize existing ferry services or, to the extent such service is incapable of meeting demand, utilize more circuitous highway routes. Consequently, fuel may be utilized less efficiently if trips which could partially be made by ferry are made entirely over the highways. Travel between the

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[35/] Source: Connecticut Department of Environmental Protection.

two areas may also be less convenient and social and pleasure trips may, consequently, be less frequent than if the ferry was available.

Denial of the application would also result in the maintenance of existing Greenport traffic patterns by precluding the introduction of a large influx of ferry-related traffic. The Village's progress as a tourist attraction would neither be hindered by clogged streets nor helped by the large number of ferry travelers which would enter town. Greenport would be more free to develop its waterfront along the lines of its Comprehensive Development Plan.

Inaction would have only a minimal impact on New London, which is already served by existing ferry service. While an additional service would be consistent with the City's development plan, the plan is not dependent on a grant of the Mascony proposal.

Finally, a denial of the application would preclude potential safety hazards in New London and Greenport Harbor. While potential adverse impacts on air and water quality in the affected areas will be avoided, these impacts would not have been significant with the ferry in operation.

B. Alternative Sites

1. Greenport. The primary alternative site for the proposed service in Greenport would be the area south of the Long Island Railroad tracks. Staging would have to be accomplished south of the tracks if this site were to be used because the area north of the tracks is leased for a term of 20 years to Suffolk County and subleased to the Village which uses it to store cars for the Shelter Island ferry. The land was made available for such purpose at no charge to the Shelter Island ferry in order to avoid the necessity of staging vehicles on Wiggins Street. The Shelter Island ferry also holds a 15-year lease over a 4,000 square foot parcel directly north of the railroad station and adjacent to its landing site.

This site would be preferable from an environmental standpoint since it would divert traffic from the congested downtown area. Eastbound vehicles destined for the staging area could turn off Front Street at Fourth Street and cross over the railroad tracks at grade into the staging area. Safety problems would be minimal in view of the infrequency of existing rail passenger service into Greenport. The railroad site would also alleviate potential safety problems in the harbor by shifting the landing site away from the numerous marinas adjacent to Mascony's presently proposed site. Existing Mascony properties could still be utilized for parking and staging purposes, although use of the railroad property for staging purposes would be preferable in order to avoid congestion on Third Street. The railroad is willing to discuss leasing this property to Mascony provided its right to future use of the property is protected and Village and County officials are amenable to ironing out potential problems.[36] Use of the railroad site would have the disadvantage of requiring some dredging in the Harbor and using a residential street, Fourth Street, for access.

Other potential sites may be available for ferry use in the northeastern part of the village. The feasibility of these sites has not been given serious consideration in view of the fact that Mascony has invested substantial sums of capital in property south of Front Street. If property for a parking, staging, and docking area could be made available in this area, ferry-related congestion on Front Street would be relieved since vehicles could utilize County Road 27 and Main Street to gain access to the ferry without entering the downtown area. However, in view of the fact that residential streets unaccustomed to handling tourist-related traffic will have to be utilized for ferry access, some disruption of residential enjoyment of the area may result.

While the Commission lacks the necessary authority to require Mascony to utilize one of the above-identified alternatives instead of its proposed site, use of any site is contingent upon approval of a Site Development Plan by the Village pursuant to Article IX of the Greenport Building Zone Ordinance.

The Tri-State Regional Planning Commission, in a study issued in December 1975,[37] considered nine potential pairs of termini for a tentative state-run cross-sound ferry operation. Greenport and New London were one of the pairs considered, with the studied site in Greenport being located on the eastern shore of the village. The study concluded that the overall feasibility of running a ferry service between New London and Greenport was poor, based primarily on the economic costs and poor highway access. It should be noted, however, that such projections were based on substantially higher volumes (between 200,000 to 2 million vehicles annually) than those projected by applicant. The study rated the impact and feasibility of site access and terminal location and construction as good.

36/ Source: Letter from Walter L. Schlager, Jr., President, Long Island Railroad, dated March 1, 1976.

37/ Crossing the Sound: A Study of Improved Ferry Service on Long Island Sound.

2. Other points on Long Island. In the event the application is denied due to operational problems in Greenport and other sites in Greenport are not feasible, Mascony could consider filing a new application seeking authority from another location in Long Island.

Mascony has already investigated alternative locations and presented an operating proposal to the Village of Sag Harbor during the summer of 1975. Sag Harbor is located on the north shore of the South Fork of Long Island, on the southern shore of Gardiner's Bay (See Figure 1). Use of Mascony's proposed Sag Harbor site would involve problems similar to what it now faces in Greenport. The docking site would be located directly north of the Business District which is characterized by quaint, narrow streets as in Greenport. Inasmuch as Sag Harbor is also a popular summer resort village, traffic problems are likely to arise during the summer months. An additional problem would be created in view of the fact that the entire Sag Harbor Village District is listed as an historic site in the National Register of Historic Places. The potential impact of ferry traffic on Village streets may adversely affect the village to the degree that a Sag Harbor proposal could require preparation of a stater[illegible] under § 106 of the National Historic Preservation Act. A Mascony spokesman has informed the Environmental Staff that it would not file an application seeking authority from Sag Harbor unless it received support from the Village. Testimony at public meetings regarding the proposal showed a mixed reaction among the townspeople, although some vehement opposition was expressed, and an organized anti-ferry group in Sag Harbor has started efforts aimed at mobilizing opinion against the ferry should an application be filed.

In addition to New London and Greenport, the Tri-State Regional Planning Commission study cited above evaluated the following sites as potential ferry termini for a cross-Sound service (the Connecticut termini are listed first in all cases): (1) Stamford-Lloyd Point, (2) Sunken Meadow-Sherwood Point, (3) (a) Bridgeport (current site) - Port Jefferson, (3) (b) Bridgeport (Fayerweather Island) - Port Jefferson, (4) New Haven-Wading River, (5) Guilford-Centreville, (6) Westbrook-Hashamock Beach, (7) Saybrook Point-East Marion, and (8) New London-Orient Point. Each pair was analyzed with respect to economic viability and the impact and feasibility of highway access, site access and terminal location and construction. Based on 100-vehicle vessels carrying a projected 500,000 vehicles per year, it was concluded that major services would be feasible only at sites (3) (a), (4), (5), and (8) with Bridgeport-Port Jefferson and New London-Orient Point being the most attractive alternatives. Despite this conclusion, the report stated that problems could be anticipated with respect to improving highway access at Port Jefferson, terminal construction and site access at Wading River, highway access at Guilford, and terminal construction at Centreville and Guilford. Except for Orient Point, none of these Long Island sites is feasible in conjunction with Mascony's New London terminal. The Saybrook Point-East Marion location was rejected primarily because of problems associated with the Connecticut site. East Marion is located between Greenport and Orient Point and may present a feasible alternative to locating at Greenport inasmuch as it is accessible to Mascony's New London terminal. However, use of the East Marion site studied in the Tri-State report would entail construction of a 400 foot long causeway in order for vessel depths to be adequately accommodated.

C. Operational changes. In lieu of changing sites, Mascony might be able to alleviate adverse impacts by making changes in its operating proposal. It might, for example, rearrange its schedule to avoid adding to traffic in the Front Street area during peak daily periods or it could stay out of Greenport during the peak season entirely.[38] While such steps would clearly mitigate adverse impacts associated with its existing proposed schedule, it is doubtful that such an operating plan would adequately serve the public during periods of greatest demand. Furthermore, it is questionable whether Mascony could maintain a viable operation without revenues from these periods of high demand.

Traffic congestion on Front Street could be alleviated to some extent if Mascony was able to obtain a right-of-way over the property of East End Supply (See Figure 4). Ferry-related traffic could either exit or enter the staging area through Third Street without competing with Front Street traffic between Third and Main, the area where traffic levels are highest. As Table 1 indicates, hourly volumes on Third Street are much lower than those on Front in spite of the fact that it is 17 feet wider. Traffic moving onto and off Front Street by way of Third would be competing with Front Street traffic at a signalized intersection. Traffic flow, therefore, would be smoother and safety hazards would be reduced. However, East End Supply is unwilling to make a right-of-way over its property available to Mascony.

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[38] It should be noted that the Commission lacks authority to require such changes.

V. ADVERSE ENVIRONMENTAL EFFECTS WHICH CANNOT BE AVOIDED.

Barring significant changes in Greenport's street alignments or traffic flow configurations, traffic generated by the proposed action will increase congestion on Front Street in Greenport which already frequently reaches its capacity during the summer months. Less severe traffic congestion may also occur in New London during peak periods.

This increase in vehicular traffic concentration within a relatively small area of Greenport will enhance the potential for accidents, as will the movement of vehicles across railroad tracks in New London. The potential for boat collisions within Greenport Harbor will also be increased. While there may be adverse impacts on air pollution in Greenport and New London, these impacts will be of short duration and concentrated in small areas and, to a small extent, will be counter-balanced by improvements in the environment between New London and New York City. Mascony's vessels will consume an estimated 432,000 gallons of fuel per year. Automobile and truck fuel savings attributable to utilization of the ferry should, however, result in less overall fuel consumption. Impacts on noise and water pollution should not be serious.

VI. THE RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF MAN'S ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG TERM PRODUCTIVITY.

The introduction of an additional ferry service linking New England and eastern Long Island is likely to have a beneficial impact on productivity. Producers in both areas will be able to expand their markets or market their goods more efficiently as a result of the fuel and travel time conserved by utilizing the ferry.

The potential increase in the number of recreational trips between the two regions stimulated by the proposed ferry would benefit areawide economies. The local economic impact on Greenport, however, is uncertain in view of the possibility that the injection of ferry travelers into the village could have both positive and adverse effects on its attractiveness to tourists and boaters.

VII. ANY IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES WHICH WOULD BE INVOLVED SHOULD THE PROPOSED ACTION BE IMPLEMENTED.

A grant of the application would result in removal of Mascony-dedicated property in Greenport from use for off-street parking or pedestrian walkways as recommended in the Village Comprehensive Development Plan. Use of Mascony's New London properties for other potential commercial or recreational purposes will also be precluded.

VIII. COMMENTS RECEIVED IN RESPONSE TO THE DRAFT ENVIRONMENTAL IMPACT STATEMENT.

Following are the responses to comments received on the draft environmental impact statement which was made available to the Council on Environmental Quality and the public on February 3, 1976. In certain instances, the numbered comments have been rephrased or abbreviated. The full text of the submissions follow the responses with parenthetical numbers in their margins for ease of cross-referencing.

To the extent practicable, responses to comments are limited to a discussion of the presence or absence of environmental impacts of the proposed action and reasonable alternatives. References to procedural rather than substantive environmental issues are considered necessary in certain isolated circumstances in order to more fully inform the public of the proper scope and content of the impact statement.

It should be noted that many of the comments were addressed to the issues of adequacy of existing service, potential traffic demand, and the impact on existing ferry services. These issues are primary determinants of the public convenience and necessity and are appropriate for determination by the Commission in its ultimate decision of the relative merits of this proceeding. Consequently, such issues have not been addressed in the final impact statement.

MASCONY TRANSPORT AND FERRY SERVICE, INC.

(1) Comment: The length of Mascony's mooring facility at Greenport is less than certain other existing pier facilities in the harbor.

Response: Agreed.

(2) Comment: Mascony proposes an alternative traffic pattern which would entail vehicles entering Wiggins Street as far west as Ninth Street, proceeding through Mascony's property at Third Street onto Front Street and then proceeding through the 55 foot alleyway to board the ferry. Vehicles would exit the landing area as previously proposed.

Response: As the analysis of traffic impacts in the draft EIS indicates, the critical area in terms of traffic flow in Greenport is Front Street between Third and Main. Mascony's proposed alternative traffic pattern might alleviate congestion at the intersection of Third and Front but, in view of the increased number of right turns which would have to be made on to Front Street, traffic congestion in this critical area would still be quite severe. The proposed alternative traffic pattern has the additional disadvantage of directly crossing the access route utilized by vehicles entering and exiting from the Shelter Island ferry.

(3) Comment: Mascony has been amenable to scheduling departures and arrivals so as to minimize possible adverse traffic patterns at Greenport.

Response: While this may be true, it should be noted that the peak period of demand for the ferry would appear to coincide with the current peak hours of traffic on Front Street. To schedule around this period (10:30 A.M. to 6:00 P.M) could have an adverse effect on the economic viability of the ferry service. Inasmuch as the Commission lacks authority over scheduling, the environmental analysis considered the probable worst case, i.e., ferry arrivals and departures during peak traffic periods. It should be noted that the EIS discusses schedule modifications as an alternative which might mitigate adverse environmental impacts.

(4) Comment: Data furnished the Commission by Cross-Sound Ferry Service, Inc., is misleading. Although the draft EIS states that Cross-Sound operates five vessels, only one to three are available at any given time and only two of these vessels are capable of accommodating commercial traffic. The Motor Vessel Caribbean Ferry is also inadequate because people were not permitted to remain in their vehicles during passage.

Response: The draft EIS states that between one and three of Cross-Sound's vessels are in service simultaneously, depending upon the time of year. However, in addition to the Orient and Plum Island, the Caribbean Ferry is also available to handle a small amount of commercial traffic. Mascony's allegation that the Caribbean Ferry is inadequate raises an issue which is beyond the scope of the impact statement.

(5) Comment: Cross-Sound's traffic figures are misleading because (a) they did not mention patrons with advance reservations who did not show for their scheduled departures, (b) no data was made available showing less-than-capacity loads during early morning and late evening departures, and (c) no data was supplied showing an alleged reduction in commercial traffic allegedly caused by a rate increase allowed in 1974 for unloaded commercial units. The Commission was also not furnished with information regarding persons and automobiles left behind or cancelled departures.

Response: Cross-Sound's traffic figures were presented merely to inform the reader of the general nature of existing ferry service available in the area germane to Mascony's application for operating authority. The EIS area of inquiry does not include an examination of whether existing ferry capacity is sufficient to accommodate current demand. Therefore, information concerning alleged cancelled departures, no-shows, traffic declines, and inability of Cross-Sound to accommodate demand for particular sailings is considered beyond the scope of this EIS and more pertinent to the determination of the proceeding on the merits.

(6) Comment: The institution of a reservation system by Cross-Sound has added to the problem rather than alleviating it.

Response: No response required.

(7) Comment: The Village of Greenport does not have any concrete plans as to the actual location of its marine museum. Contrary to what is stated in the EIS, certain property owned by Mascony is desired for the site of this "Aquaseum".

Response: The draft EIS did not purport to imply that plans for the Aquaseum were concrete at the time the document was prepared. The project was quite speculative at that time and subsequent developments with respect to the Aquaseum are discussed in Part II A of the final EIS.

(8) Comment: The pedestrian mall envisioned by the Greenport Comprehensive Development Plan is speculative inasmuch as it would entail the taking of waterfront property owned by Mascony and other property owners.

Response: Agreed.

(9) Comment: Greenport is becoming a "ghost town", there being nothing in the Village to attract business or tourism.

Response: While Greenport has been labeled a depressed area by the County for the reasons expressed in the EIS, indications are that tourism is increasing during recent years. Existing traffic congestion on Front Street during summer weekends and heavy pleasure boat activity in the harbor at such times are not characteristics one would expect to find in a "ghost town". Furthermore, the seeking of additional tourist attractions, such as the Aquaseum and an in-the-water boat show, by the Village indicate a reasonable expectation that tourism will increase rather than decline in the future.

(10) Comment: Elimination of on-street parking on Front Street would go a long way in alleviating alleged traffic congestion.

Response: Agreed. Subsequent developments concerning potential traffic flow improvements in Greenport are discussed in part III A of the final EIS.

(11) Comment: Removal of on-street parking as well as adoption of Mascony's alternative routing plan would eliminate problems associated with entering and exiting from the ferry landing site in Greenport.

Response: As is pointed out in the draft EIS, elimination of on-street parking on Front Street would mitigate the adverse traffic impacts which would be caused by the institution of Mascony's proposed service. However, the implementation of such a mitigating measure is entirely within the discretion of the Village of Greenport. Despite the recommendations made in the Village Comprehensive Development Plan, removal of curb parking along Front Street does not appear to be imminent, at least in the immediate future. In view of the lack of concrete plans, the EIS must consider the impact of Mascony's proposal under existing traffic conditions. The response to comment (2) above indicates that Mascony's proposed alternative routing plan would have little effect in alleviating previously identified traffic congestion impacts.

(12) Comment: Mascony has approached the Long Island Railroad concerning lease of its property at Greenport for use as a ferry pier. It has also sought to discuss the matter with Greenport officials but has received no response.

Response: Recent developments pertaining to negotiations for use of the Long Island Railroad property are discussed in section II A of the final EIS.

(13) Comment: Contrary to the information in the draft EIS, Mascony's proposal to the Long Island Railroad embraces the area south of the railroad pier and not the pier itself. Such property is already bulkheaded and would require minor repair and minimum dredging.

Response: Agreed. The EIS has been modified accordingly.

(14) Comment: Although the draft EIS expresses concern regarding heavy truck traffic over First Street in Greenport, it should be noted that heavy trucks presently traverse First Street in order to make deliveries to local retail establishments.

Response: Although commercial traffic currently uses First Street to deliver goods to Greenport stores, the number of trucks involved (approximately four per day) is substantially less than the number of trucks which would be introduced into the Village as a result of the proposed ferry.

Furthermore, the Village has requested that local deliveries be made before 6:00 A.M. to avoid the presence of such trucks in the Village during peak hours of traffic.

(15) Comment: It is requested that the Commission consider the ferry operations conducted by the Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority between Woods Hole (Falmouth) and Martha's Vineyard, Mass. Although access and egress to and from said ferry is solely by means of a two-lane highway allegedly inferior to Front Street in Greenport, it transported over 180,000 passenger and 29,000 commercial vehicl in 1973 without difficulty. Therefore, no sound reason exists to conclu that Mascony's proposed service would not be feasible.

Response: The highway access plan for the ferry in Greenport and the existing access to the ferry in Woods Hole are not comparable from a traffic management standpoint. The capacity of Woods Hole Road (Massachusetts Route 28), with 24 feet of crossection divided into two 12-foot lanes and no on-street parking, is much greater than the existing configuration of Front Street. The staging areas and their relationship to th major public roads are also different. The proposed staging area in Greenport would be reached by way of a 55-foot alley off of Front Street and includes parking for only one boat load of vehicles. The Woods Hole staging area, on the other hand, includes sufficient parking for several ferry sailings and is reached from Woods Hole Road by way of an access road.

(16) Comment: Mascony's vessels are radio equipped and thus able to communicate with the Shelter Island Ferry and the appropriate hospital facilities so as to allow ambulances to move freely between Greenport and Shelter Island during emergency conditions.

Response: Radio communication between Mascony vessels so equipped, Greenport hospital facilities and the Shelter Island Ferry could avoid, in some circumstances, interference with ambulance service between Greenport and Shelter Island. However, emergency situations may arise while Mascony ferry traffic is being unloaded onto the streets of Greenport. The resultant traffic stoppage during traffic peaks could conceivably block access to the Shelter Island Ferry despite Mascony's efforts to maintain radio contact.

(17) Comment: The danger to fishing or pleasure craft in Greenport harbor should be mitigated due to the 5 mile per hour harbor speed limit, the maneuverability of Mascony's vessels, and the ability of said vessels to stop within a distance equal to their length.

Response: Despite the factors asserted in Mascony's comment, collisions between ferry vessels and smaller craft in Greenport harbor will still remain a possibility. Although Mascony's crew may exercise cautio and adhere to the "rules of the road", collisions may occur as a result of operating errors made by navigators of fishing and pleasure craft. It should be noted, however, that the Coast Guard has not indicated in its comments to the draft EIS that the ferry's impact on navigational safety in Greenport harbor will be significantly adverse.

(18) Comment: Greenport is a severely depressed area which could well be economically revitalized by business development attributable to the institution of ferry service.

Response: As was indicated in the response to comment (9) above, characterization of Greenport as a severely depressed area is not quite accurate. While the proposed ferry service may arguably have a beneficial impact on the local economy, it is also possible that increased traffic congestion, air pollution and safety hazards may impair its desirability as a tourist attraction.

(19) Comment: There is a need for the proposed ferry operation. The Tri-State Regional Planning Commission study which is mentioned in the draft EIS, despite concluding that the overall feasibility of a New London-Greenport service was poor, based this conclusion on the economic costs of a state or federally-subsidized service and did not mention private enterprise such as that proposed by Mascony. The draft EIS also did not refer to the statement accompanying the Tri-State study by the New York State Transportation Commissioner which indicated a need for improved ferry service and an end to total reliance on east-west land routes between Long Island and Connecticut.

Response: The issue of public need for a new ferry service is extraneous to this impact statement and will not be discussed herein. It is relevant to note, however, that the Tri-State Planning Commission conclusion regarding a New London-Greenport crossing was based not only on the lack of economic viability of a state-subsidized operation but also on the fact that highway access on Long Island was considered poor. Again, it should be pointed out that the Tri-State study was predicated upon a substantially greater volume of traffic than that projected by Mascony.

(20) Comment: With respect to the operational changes suggested in the draft EIS, East End Supply has not been willing to grant Mascony an easement over its property.

Response: Agreed. The traffic routing plan which contemplated an easement over East End Supply property was suggested as an alternative which might be feasible if the right to utilize said property could be obtained. Of course, whether this alternative could be implemented depends on the willingness of the owner to make it available for right-of-way purposes.

(21) Comment: Mascony would convert its vessels to diesel fuel if authority to perform the proposed service is granted, thus bringing about further fuel conservation.

Response: This consideration is discussed in the text of the final EIS. It should be noted, however, that the fuel consumption analysis in the EIS is presented in terms of current vessel fuel consumption so that a "worst case" scenario can be considered.

CROSS-SOUND FERRY SERVICES, INC., AND THE BRIDGEPORT AND PORT JEFFERSON STEAMBOAT COMPANY

(22) Comment: The assessment of the environmental consequences of Mascony's proposal is based upon conditions which are more favorable than those which actually exist. Mascony no longer has a legal interest in the Greenport property which it proposes to use for access and as a staging area (the so-called Mitchell property) since the mortgage to which Mascony's lease was subject has been foreclosed upon. The present owners of the property have no intention of allowing Mascony to use the property in connection with its proposed operations.

Response: The mortgage held by Mascony's lessor, Advine Realty, Inc., was foreclosed due to default and the property reacquired by the mortgagees, the original owners. There is some question as to whether Mascony's interest was terminated by said foreclosure sale since the original owners expressly subordinated their mortgage to Mascony's leased on the subject property. However, resolution of this legal issue is beyond the scope of the EIS and will be left to settlement between the involved parties. The purpose of the EIS is to analyze the environmental impacts resulting from the action proposed by the applicant. Inasmuch as Mascony's proposal contemplates use of the Mitchell property for an access and staging area, the analysis has focused on this particular site.

(23) Comment: The Long Island Railroad pier could not be used as an alternative docking site because it is under a 20-year lease to Suffolk County. Said lease prohibits commercial activity of the type proposed by Mascony.

Response: The draft EIS erred in suggesting that the Long Island Railroad pier could be considered as a potentially available alternative. Rather, the Long Island Railroad property located southwest of the pier should have been the site discussed. The final EIS has been modified accordingly.

(24) Comment: Reference to the use of attendants to control traffic flow on the streets of Greenport is objected to on the ground that no provision for such an expense was included in Mascony's financial projections used to demonstrate the feasibility of its proposed operation.

Response: While provision for attendants may not have been included in Mascony's financial projections at the time of the hearing in this proceeding, Mascony has since informed Environmental Staff Evaluators that attendants would be utilized to control traffic flows in Greenport.

(25) Comment: Contrary to what is reported in the EIS, Mascony does not hold an option to purchase the so-called "De Noia property" in New London. Therefore, any environmental impact assessment based on the assumed utilization of that property is meaningless.

Response: Inasmuch as Mascony still plans to utilize this site (referred to in the EIS as the Bank and Sparyard site), an environmental assessment of the impacts of such utilization is, therefore, valid. The current status of the De Noia site, as well as its potential future disposition, is discussed in more detail in section I of the impact statement.

(26) Comment: The EIS fails to give proper recognition to the fact that the New London city pier is not available for permanent use by Mascony. In a recent action, the New London City Council decided to renew Mascony's lease for an additional 6 months with no option to renew. Thus, the finding that the ferry's use of the municipal pier would be consistent with city plans in the area is contrary to the true situation.

Response: The EIS recognizes the fact that the municipal pier is a provisional site to be utilized only until Mascony receives clearance from the appropriate State agencies allowing use of the Bank and Sparyard site as an eventual permanent location. The decision by the New London City Council to renew the lease for only 6 more months (until August 31, 1976) with no option to renew transpired after the issuance of the draft EIS. The main concern expressed in the section of the EIS dealing with city plans was whether even temporary location of Mascony at the municipal pier would interfere with identifiable developmental plans. In view of the fact that the city plans to establish a multi-modal transportation terminal in the area adjacent to the municipal pier, interim use of the pier for ferry purposes would be consistent with such plans.

(27) Comment: Although the EIS suggests that Mascony can dock along the north side of the New London municipal pier, it overlooks the fact that Mascony's vessels are bow and stern loaders which are not susceptible to being loaded or unloaded while laying alongside the pier.

Response: The draft EIS was not suggesting that Mascony could dock alongside the pier; rather, it was describing Mascony's operating proposal. Mascony does not intend to load and unload off of the pier itself but plans to utilize an area directly adjacent to the pier for such purposes.

(28) Comment: The EIS fails to give proper consideration to existing traffic generators already present at the pier, including the Eugene O'Neill Theater Barge and the Fisher's Island Ferry, both of which generate subs antial traffic in the summer months.

Response: The Eugene O'Neill Theater Barge is currently under construction and will not be in operation until sometime after 1976. In view of the fact that Mascony's use of the municipal pier is to be only short-term and temporary, it is unlikely that Mascony would be docking at the pier after the Theater commences operation. The Fisher Island Ferry is quite small, its vessels having a capacity of between 9 and 18 vehicles. Its spring schedule ranges between 2 trips (on Mondays) and 5 trips (on Fridays) daily. While the summer schedule is not yet available, the number of trips made is not expected to be substantially greater. This volume of traffic, when added to the vehicles generated by Mascony, should not create significant congestion problems.

(29) Comment: Although the EIS assumes that 65 passenger cars will be staged at the New London municipal pier, the lease under which Mascony proposes to use said pier permits no more than 60 vehicles to be staged thereon.

Response: Agreed. The EIS has been modified accordingly.

(30) Comment: The impact statement assumes operation by Mascony of three of its four vessels. However, two of Mascony's vessels have been advertised for sale recently, thereby suggesting a change in its present intentions.

Response: Applicant's present intention, as expressed to the Environmental Staff, is to sell only the S.S. Delaware, the vessel which it does not plan to use in its proposed New London to Greenport service. It is the Staff's understanding that the Greenport, Cape Henlopen and Cape May will be used in such operations.

(31) Comment: Mascony's schedule of operation is totally unrealistic since it assumes a running time of 90 minutes from dock to dock. It was demonstrated by expert testimony at the hearing that a minimum running time would be 124 minutes in each direction.

Response: Mascony's proposed running time of 90 minutes is based upon an average operating speed of 15 knots for 19 miles and approximatel 5 knots for 2 miles (entering and leaving the respective harbors). Although protestant's expert differed with this calculation, the impact statement must address Mascony's proposal as presented. Even assuming, for argument's sake, that protestant's figure of 124 minutes in each direction was accurate, the only change in environmental impact would be a reduction in the fuel conservation benefit achievable through institution of Mascony's ferry service. Traffic congestion and related environmental impacts would be similar regardless of precise arrival and departure times so long as Mascony schedules the same amount of sailings.

(32) Comment: Loading and unloading time for Mascony's vessels appears to be grossly understated.

Response: The EIS merely describes Mascony's proposal with respect to this matter. While the time allotted for loading and unloading may not be precisely accurate, it is considered to be a reasonable estimate.

(33) Comment: The EIS fails to give proper recognition to the fact that existing service is operating at less than full capacity and that substantial fuel savings could be achieved by better utilization of existi service without the substantial quantities of fuel needed for applicant' vessels.

Response: From a fuel conservation standpoint, the most desirable situation would be to have all vehicles utilize a single service at capacity rather than two or more operations at reduced capacity. However, denial of Mascony's application would not necessarily result in better utilization of existing service inasmuch as it would merely mean maintenance of the status quo. Increases in utilization of existing service would have to result from operational improvements or decreased rates. While denial of the application would not increase fuel efficiency, a grant might have the adverse effect of decreasing protestant's operating efficiency. The extent of the impact on protestant's operations cannot be determined, however, due to the fact that the amount of traffic which may be diverted by Mascony from existing service is speculative.

(34) Comment: There is no basis for the presumptions that Mascony will install holding tanks in its vessels, install fail-safe railroad crossings, and station attendants to control traffic flows.

Response: The installation of holding tanks on Mascony's vessels and fail-safe railroad crossings in New London are both required by law; the former by U.S. Coast Guard regulations (33 C.F.R. 159), albeit not until January 1980, and the latter by 23 U.S.C. § 322 (a) and Chapter 279 of the Connecticut General Statutes (see footnote 6 of the EIS). Mascony asserted to the Environmental Staff that it will station attendants to control traffic flows. Although these items may not have been provided for in the original financial projections, they have been subsequently made necessary to alleviate potential adverse environmental impacts.

(35) Comment: The Caribbean Ferry is fully capable of carrying trucks and regularly does so. The EIS is somewhat misleading in stating Cross-Sound has only just begun to transport trucks on its winter schedule since the winter of 1975-76 is the first winter protestant has been in operation and it has continually held itself out to transport commercial traffic during this time.

Response: It is agreed that the Caribbean Ferry is able to carry a limited number of trucks and the EIS has been modified accordingly. The draft impact statement did not intend to imply that Cross-Sound has not continually held itself out as transporting commercial traffic during the winter months. Rather, the statement criticized in the comment was intended merely to show that Cross-Sound's predecessor, New London Freight Lines, did not handle trucks on its winter schedule and that this practice was only recently terminated with the acquisition of its operating rights by Cross-Sound.

(36) Comment: There is no basis for concluding that the proposed ferry operation would promote tourism and have a beneficial effect on productivity since existing capacity already exceeds demand. In fact, another ferry service may have the opposite effect of discouraging traffic since dilution of revenue traffic would inevitably lead to rate increases.

Response: The record in this proceeding indicates that the greatest strain on Cross-Sound's capacity occurs during the summer months, when it was testified that long waiting periods for boarding the ferry were commonplace. Conditions such as these may well discourage tourists from using existing service, particularly when the waiting time may substantially erase the time advantages to be achieved in crossing the Sound by ferry. The availability of an additional service and the promise of shorter waiting periods could encourage tourists to increase travel within the involved areas. The financial impact on existing service was not considered since it is beyond the scope of inquiry of the impact statement.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION II

(37) Comment: The proposal may lead to contravention of ambient air quality standards in the Village of Greenport, particularly as a result of emissions from cars queuing in local streets waiting to board the ferry. Applicant should either delay implementing service until the recommended traffic improvements have been made or demonstrate by means of diffusion analysis that ferry operations will not interfere with maintenance of the carbon monoxide standard.

Response: The Environmental Staff has conducted a diffusion analysis of the impact of the ferry service on air quality in downtown Greenport and has concluded that vehicular traffic associated with ferry operations may interfere with maintenance of the carbon monoxide standard in a limited area along the waterfront. The analysis is explained in greater detail in Section III C of the impact statement.

(38) Comment: Contravention of air quality standards is not expected at New London because traffic congestion will not be a problem and the absolute effect of the ferry service upon traffic is small.

Response: Agreed. However, there may be contravention of air quality standards in a "worst case" situation, i.e., at a point at the source with 40 engines running simultaneously.

(39) Comment: In order to limit unwarranted air pollution and fuel consumption, unnecessary engine idling should be prohibited while cars wait to board the ferries.

Response: While the Environmental Staff endorses this suggestion, the Commission lacks authority to impose such a prohibition. Mascony could, however, post signs discouraging unnecessary idling in its staging areas.

(40) Comment: Concern is expressed regarding the potential impact of increased heavy truck traffic on sewer pipes in Greenport. The EIS states that the risk of pipe ruptures has been reduced to some extent by Mascony's proposal to divert traffic from this area but the term "some extent" is not explained in any detail. It should be determined whether similar conditions exist in other areas of Greenport and whether mitigating measures can be adopted.

Response: The term "some extent" was used to indicate that Mascony's proposed traffic routing would substantially reduce the number of commercial vehicles using First Street as opposed to its earlier plans. While Mascony would have no control over the use of First Street by trucks entering Greenport to board the ferry, Greenport's location at the eastern end of Long Island makes it likely that most traffic will approach the ferry site from the opposite side of the village. Village officials do not contemplate problems with sewer pipes on Front Street since Front Street has a concrete rather than a macadam base, thus offering sewer pipes more protection. While the Commission does not have the authority to impose mitigating measures, the Village of Greenport could eliminate the problem by banning commercial traffic from First Street after the early morning hours.

(41) Comment: The final EIS should discuss the potentially harmful effects of Mascony's plan to alter the Bank and Sparyard pier on water quality and aquatic life in New London Harbor.

Response: The draft EIS discussed such matters and concluded that the impacts on water quality and aquatic life would be minimal. However, the EIS has been modified to include more specific information regarding these impacts.

(42) Comment: The final EIS should discuss the level of treatment to be provided by Mascony's sewage filter system and the potential impacts of discharging the filtered wastes into New London Harbor. The term "acceptable quality" as used in the water quality section should be quantified. Finally, information regarding the ability of the New London Sewage Treatment Plant to handle Mascony's wastes should be provided.

Response: Mascony would pump treated sewage into New London Harbor only if such sewage was of sufficient quality to meet applicable Federal or State standards. If such standards are met, the impact of discharging the treated waste into the harbor should not be significant. The ability of the New London Sewage Treatment Plant to handle the additional sewage generated by Mascony is discussed in Section III D of the EIS.

UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, NORTHEAST REGION

(43) Comment: Further consideration to utilizing the south side of the Long Island Railroad pier as an alternative site is recommended. Such an alternative might increase recreational opportunities by enhancing access to the waterfront.

Response: See Section II A of the final EIS for further discussion concerning the Long Island Railroad site in Greenport.

(44) Comment: The Long Island Sound Regional Study recently published by the New England River Basins Commission recommended the development of small, passenger-only ferries or launches to provide relatively efficient, non-destructive access to beaches, and to enhance the recreational experience. The final statement should make reference to this report.

Response: While the type of ferries described in the comment are not of the type contemplated by Mascony's proposal, the New England F Basins Commission report is discussed in section II A of the final EIS.

(45) Comment: The final EIS should contain some in-depth information regarding the safety of small craft in the project area. It may be desirable to modify the application to provide for the safety of fishing and pleasure craft.

Response: The Environmental Staff requested in-depth information from the Coast Guard regarding potentially hazardous conditions in Greenport Harbor resulting from inauguration of the proposed ferry service. The Coast Guard's response to this request is stated in section III F of the final statement. While the application could not be modified to protect fishing and pleasure craft, Mascony's utilization of the identified potential alternative sites could reduce the potential danger to small craft operators.

(46) Comment: The appropriate State Historic Preservation Officers should be contacted to assure no oversight of historic resources.

Response: The appropriate officers, or their representatives, were contacted and no additional historic resources which might be adversely affected by the proposed action were uncovered.

(47) Comment: The possible adverse impacts on the Greenport Natural Study Area should be checked.

Response: Agreed. Refer to Section III E of the final EIS.

(48) Comment: Since the U.S. Fish and Wildlife Service will comment on Mascony's application for a Corps of Engineers permit in connection with its installation of 14 dolphins in the Greenport ferry slip, it would be appropriate to include some comment from the Service on its probable position on the permit application.

Response: The U.S. Fish and Wildlife Service was contacted with respect to its probable position on the Corps of Engineers permit application. It was indicated to the Environmental Staff that the Service would have to conduct a field investigation before it would commit itself on a position. In view of the fact that the instant proceeding has been pending before the Commission for more than 3 years and a decision on the application is desirable before the August peak season, and inasmuch as the Fish and Wildlife Service will be afforded an opportunity to review Mascony's permit application at a later date, it is not considered desirable to further delay disposition of this proceeding to await the results of said investigation.

DEPARTMENT OF TRANSPORTATION, UNITED STATES COAST GUARD

(49) Comment: The indication that the EIS is not the appropriate forum in which to resolve such issues as the existence of public need for the

proposed service and the effect on existing water carriers is inconsistent with section 1500.8(3)(ii) of the Council on Environmental Quality (CEQ) Guidelines. Public need and effects on other carriers should be discussed as secondary impacts.

Response: Section 1500.8(3)(ii) of the CEQ Guidelines states that secondary or indirect consequences for the environment should be included in the EIS analysis. Such secondary consequences include stimulation or inducement of associated investments and changed patterns of social and economic activities. The EIS indicated that tourism and commercial activities in the involved areas could be stimulated by the proposed ferry operation. The issue of whether a public need exists for an additional ferry service, however, is not a consequence of the proposed action but rather a prerequisite for the proposal to be authorized by the Commission. The determination of this issue as well as the issue involving the financial impact on other water carriers has historically been entrusted to Commission decisionmakers under the Interstate Commerce Act and, as such, is not a relevant area of concern in the EIS. The purpose of the EIS is to identify and analyze environmental impacts. Balancing of these impacts with the involved economic, regulatory, and other traditional issues will be performed by the Commission in its ultimate decision on the relative merits of this proceeding.

(50) Comment: It would be helpful to indicate the displacement of Mascony's ships in tons.

Response: Agreed. The EIS has been modified to include this information.

(51) Comment: Greenport is the easternmost terminus of the Long Island Railroad on the north fork of Long Island. The LIRR runs as far east as Montauk on the south fork.

Response: Agreed. The EIS has been modified accordingly.

(52) Comment: Additional data and analysis are required to substantiate the opinions reached regarding the impact on traffic congestion in Greenport.

Response: In the preparation of its analysis of traffic impacts in Greenport, the Environmental Staff contacted (a) the Tri-State Regional Planning Commission, (b) the New York State Department of Transportation's Region 10 Planning and Development Division, and (c) the Suffolk County Traffic Safety Department. The only recent traffic data available were hourly traffic counts taken on a summer weekend day in 1974 and Annual Average Daily Traffic (AADT) figures for N.Y. State Route 25 from NYS 114 to County Route 27. Included in the latter was an estimate of the design hour volume.

The hourly traffic figures, supplied by Suffolk County, were used because they were considered the most effective indicators of the impact Mascony's ferry service would have on existing traffic patterns within the Village. This data not only indicates hourly fluctuations in traffic but also demonstrates a plateauing effect at peak levels for several hours. This effect was interpreted as an indication of the road's capacity.

The "design hour" taken from New York State DOT's AADT figures approximated the upper range of figures presented in the hourly counts which lends a degree of verification to the assumptions made which were based on these counts. The AADT figures were not used for the detailed analysis, however, because they give no indication of any significant variation in traffic during the various months of the year, days of the week, or hours of the day (AADT is computed by dividing the total annual traffic by 365). Without inclusion of these variations in traffic flow, development of an analysis of the ferry's impact on traffic flows during peak traffic hours, the so-called "worst case" scenario, would not be possible.

(53) Comment: It would seem practicable to compute energy savings offered to commercial operators carrying potatoes from Long Island to specific New England markets.

Response: The 800 seed potato trailers identified in the EIS all have destinations in Maine and origins in areas slightly west or south o Greenport. If these vehicles would not otherwise use existing ferry service, the fuel savings would be approximately 32,000 gallons annually.

(54) Comment: Additional quantitative documentation should be presented regarding the impact of air pollution at New London and Greenport.

Response: See response to Comment (37).

(55) Comment: Mascony will be required to comply with USCG regulations concerning fuel transfer.

Response: Agreed.

(56) Comment: The ability of any vessel to navigate safely in restricted waters is a function of operator skill and adherence to the rules of the road and traditions of the sea. Collisions are possible and occur, even when only two vessels meet in open ocean, largely due to operator error. The introduction of commercial service will require more prudent operating practices.

Response: Agreed.

(57) Comment: No objective data supports the statement that an increase in passenger vehicles and the addition of large vessels in Greenport will be incongruous with waterfront aesthetics.

Response: Environmental impacts need not always be capable of bein quantified by objective data. The area of aesthetics in particular is not really susceptible to being measured in objective terms. The conclusions expressed in this section of the EIS were based on the reasonabl assumption that traffic-clogged streets and large vessels are not particularly consistent with the quaint fishing village ambiance projected by Greenport.

(58) Comment: What is the current noise level in Greenport and how was this determined? What method of projecting future noise impact was used

Response: Data regarding existing Greenport noise levels were unavailable. The conclusions expressed in the EIS were based on the assumption that, based on established principles of noise measurement, an increase in noise intrusion much greater than that caused by the proposed ferry would be required to significantly alter noise levels in Greenport.

(59) Comment: Reference to the Tri-State Regional Planning Commission study's conclusion that the feasibility of a New London to Greenport service is poor is valid. However, the indication on page 54 of the draft EIS that applicant projects carrying between 200,000 to 2 million vehicles annually is inconsistent with a previous statement asserting that 66,385 vehicle spaces are projected on an annual basis.

Response: The figures 200,000 to 2 million vehicles annually referred to the volumes projected in the Tri-State Regional Planning Commission study and not those projected by Mascony. The EIS has been slightly modified to clarify this point.

(60) Comment: The Final Report of the Long Island Sound Regional Study of the New England River Basin Commission indicates that existing ferry service between Bridgeport and Port Jefferson and New London and Orient Point is "woefully inadequate".

Response: No response required.

VILLAGE OF GREENPORT PLANNING BOARD

(61) Comment: The impact statement's projection of fuel savings as up to 600,000 gallons annually is objected to as being inconsistent with the subsequent conclusion that the ferry's beneficial impact on energy consumption cannot be conclusively deemed significant. Additionally, the amount of energy consumed by cars or trucks which would utilize Mascony's ferry simply because it existed cannot be estimated.

Response: The EIS's conclusion that the energy impacts could not be deemed conclusively significant were based upon (a) the uncertainties inherent in making accurate predictions of the energy conservation attributable to Mascony's proposed operation, and (b) the fact that the amount of fuel saved, even if the liberal figure of 600,000 gallons was accepted, would represent less than one hundredth of one percent of total fuel consumption in the affected area. It is agreed that traffic generated solely by the advent of Mascony's proposed service cannot be estimated and no attempt was made to do so.

(62) Comment: Intervenor objects to the fact that Mascony has not yet provided it with a site development plan, thus denying it the opportunity to consider Mascony's various proposals.

Response: No response required.

(63) Comment: The Planning Board objects to Mascony's proposed routing plan and asserts that it questions the legality of using attendants not duly empowered by the State or Village to direct traffic.

Response: No response required.

(64) Comment: The rerouting of intermittent large volumes of traffic along First Street would infringe upon the rights of area residents, particularly since many of the homes are located close to the street.

Response: While increased traffic along First Street would create some annoyance to residents along the street, it is unlikely that the infringement upon the enjoyment of their property will be significant. Ferry traffic boarding at Greenport will predominantly come from the west and, therefore, will not normally approach the terminal by way of First Street. During the peak season, Mascony's plans now call for four landings at Greenport daily. This would result in an additional 360 vehicles, not all of which would be routed down First Street. Since there are no indications of congestion problems on First Street north of Front Street, the increase in traffic should not prove unduly burdensome to residents.

(65) Comment: Increasing the traffic load at the intersection of First, Main and Webb Streets, one of the most dangerous intersections in the Village, would present a serious traffic problem.

Response: Increasing the traffic load at the above-described intersection would add to existing safety problems already in existence. The intersection is potentially dangerous since Main crosses the intersection of Webb and First diagonally.

(66) Comment: The proposal to route vehicles north on First Street, then west on North Street to connect with Moore's Lane is not feasible since North Street does not connect to Moore's Lane by public access.

Response: Agreed. The EIS has been modified accordingly.

(67) Comment: The routing of commercial vehicles out through the proposed 55 foot alleyway onto Front Street is objectionable since turning would be difficult and traffic on Front Street would, by necessity, have to be stopped. Use of the alleyway for both access and egress would create further safety and congestion problems.

Response: The problems entailed with routing traffic through the 55 foot alleyway are discussed in the EIS.

(68) Comment: Use of the proposed peripheral staging areas would create additional safety problems at the intersection of Front and Third Streets, the most hazardous in the village. Routing cars bound for these areas through Wiggins Street is objectionable because this residential street is already used by traffic waiting to board the Shelter Island ferry.

Response: The EIS discusses the impact of increasing traffic at the Front and Third intersection. Since most, if not all, of a boatload of cars could be staged adjacent to the pier, use of peripheral staging areas is not expected to be heavy. Village officials had previously informed the Environmental Staff that the Village had leased an area north of the railroad tracks to be used as a staging area for the Shelter Island ferry in order to obviate queuing on Wiggins Street.

(69) Comment: The Village would not benefit that much from tourism and, on the other hand, it would become a direct link between Interstate 95 and the Long Island Expressway. Greenport's road beds, street patterns and way of life could not adapt to this increase in traffic.

Response: No response required.

(70) Comment: The Southold Town Board will sponsor a $300,000 grant from New York DOT for renovation of the Orient Point ferry terminal facilities. These improved facilities coupled with the greatly improved ferry service now offered by Cross-Sound will eliminate the objections presented at the hearing relative to the need for improved ferry service between Eastern Long Island and Connecticut.

Response: No response required.

CITY OF NEW LONDON, CONN.

(71) Comment: The City Council of New London gives its qualified endorsement of the proposed ferry service. The current lease with Mascony for use of the city pier expires August 31, 1976, and the city reserves the right to require Mascony to move to a more suitable location after the expiration date.

Response: The information contained in the comment has been incorporated into the final EIS.

STATE OF CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION

(72) Comment: It appears that an unmet demand for additional ferry service may well exist. Should the proposed service be instituted, the outstanding issues concerning route and terminal location should be resolved prior to commencement of such service in order to maintain the safety, welfare and character of the communities involved.

Response: No response required.

(73) Comment: More frequent service, increased capacity and reduced fares would be desirable for the public convenience. Formal and informal studies suggest a manifest and latent demand for increased service, provided it is offered in an efficient, cost effective manner.

Response: No response required.

(74) Comment: Mention should be made of the New London Hurricane Barrier project for which the Army Corps of Engineers has prepared a revised draft EIS. This project could result in shortened sightlines on an already hazardous railroad crossing and a brief discussion of its relationship to the instant proposal would be appropriate.

Response: Agreed. The EIS has been modified accordingly.

(75) Comment: The addition of a bulkhead and 1,915 cubic yards of clean bank gravel will not have a short term effect on New London harbor; rather, a portion of the harbor, albeit small, will be permanently altered. Although it may intuitively be assumed that the impact will be minor, there is no discussion of the type or amount of marine habitat to be displaced or its role and importance in the marine ecosystem.

Response: The EIS finding that impacts on water quality and marine habitats in New London would be minor was based on a report of the State Department of Environmental Protection relating to Mascony's original proposal to improve the Bank and Sparyard stone jetty pier. The final EIS has been modified to include a more detailed description of the marine habitat which would be displaced.

(76) Comment: Mascony must reapply for Connecticut Water Quality Certification due to the proposed changes in its plans before it can be determined that such alterations will not permanently violate the State's water quality standards.

Response: Agreed.

CONNECTICUT DEPARTMENT OF TRANSPORTATION

(77) Comment: Since the Connecticut DOT study of the New London-Orient Point service was made in 1972, the fare on this ferry was increased and a sharp drop in ridership has occurred. A ridership estimate based on two day counts in 1972 should be more fully documented. The point should be made that providing service will not guarantee ridership and that factors such as fare, crossing time and waiting time should be taken into account in developing ridership estimates.

Response: The 1972 Connecticut DOT ridership study was not used by the Environmental Staff to develop a ridership estimate. Rather, the study was cited in the EIS for three purposes: (a) to describe Mascony's proposal which was based to some extent on the number of turnaways recorded in said study, (b) to indicate the primarily recreational nature of ferry use, and (c) to indicate general origin and destinations of ferry users. The most recent ridership figures were presented in the draft EIS. It is agreed that fares, crossing time and waiting time will be factors in computing ridership estimates. However, the EIS does not purport to make such computations.

(78) Comment: If Cross-Sound purchases another vessel, the justification for more capacity from an additional service would be reduced. During the off-peak months there would be additional excess capacity at present fare levels.

Response: The comment pertains to the issue of whether the public convenience and necessity require the proposed service and, consequently, is beyond the scope of the EIS.

(79) Comment: Both ConnDOT and the Connecticut PUC would have to review the proposed railroad crossing design and vehicle movements. The potential safety problem pointed out at the first hearing would apparently still exist.

Response: Agreed. This was discussed in the draft EIS.

CONNECTICUT STATE HISTORIC PRESERVATION OFFICER

(80) Comment: Inferences that Bank Street will be widened under urban renewal do not take into account that Bank Street itself may be eligible for listing in the National Register of Historic Places. Any project contemplating widening of the street or demolition of structures thereon must take into account historic and architectural resources of the area.

Response: The proposed widening of Bank Street pursuant to the Shaw's Cove urban renewal program is completely independent and separate from the Mascony application. While the redevelopment project may have potential adverse affects on historic and architectural resources in the area, this matter would have to be resolved between the Redevelopment Agency and the State. With respect to Mascony, demolition of any buildings on Bank Street is not proposed in its plan of operations.

(81) Comment: A list of properties in New London on the Statewide Inventory of Historic Resources is enclosed, several of which are eligible for the National Register of Historic Places.

Response: Of the properties on the list, only the De Noia Brothers Furniture Store, otherwise known as Bassett House, is involved in the proposed action. Mascony's plans do not call for demolition or significant alteration of this structure. Accordingly, the proposal would have no adverse effect upon this property.

(82) Comment: While it is agreed that additional traffic adjacent to the New London Railroad station will provide positive effects, not taking into account the impact of widening Bank Street on historical and architectural resources, is objectionable.

Response: The widening of Bank Street is not an impact attributable to the Mascony proposal; rather, it is an independent plan proposed by the New London Revelopment Agency which is in no way dependent upon the disposition of the instant application. Consequently, the impacts associated therewith are not relevant.

FIGHT THE FERRY

(83) Comment: Contrary to the statement in the EIS that testimony at public meetings in Sag Harbor showed mixed reaction among the townspeople to Mascony's proposal, efforts to block the ferry in Sag Harbor have received overwhelming support.

Response: The referenced statement was meant to indicate that testimony both in favor of and against the ferry was received at the Sag Harbor public meetings. The fact that opponents of the ferry may have been more demonstrable than supporters in expressing their viewpoints does not alter that fact.

EAST END SUPPLY CO., INC.

(84) Comment: Protestant restates its opposition to the proposed service on the grounds that the vehicular traffic generated by the ferry would present a safety hazard and would virtually close off protestant's access to Front Street for long periods of time. If the ferry's traffic is to be expedited, then the general public will be substantially inconvenienced for the fewer number who use the ferry.

Response: No response required.

ST. PRESTON & SON, INC.

(85) Comment: The EIS conclusion that establishment of Mascony's terminal in the heart of Greenport would create severe congestion problems is a vast understatement. Ferry traffic on Greenport's narrow streets during certain times of the year could seriously impair local businesses and prevent emergency equipment from responding to emergencies.

Response: As is noted in the EIS, traffic generated by the ferry could well have an ambivalent effect on Greenport from the standpoint of economic growth. While potential traffic problems could discourage the patronizing of local businesses to some extent, the influx of ferry users (and potential customers) into the village may also have a stimulating effect.

(86) Comment: Introduction of Mascony's vessels into Greenport's small harbor would be dangerous to small craft and consequently keep away customers who arrive by water.

Response: The presence of the ferry in Greenport harbor may create some additional hazards to small craft navigation. However, the extent to which it may keep small craft operators away from Greenport is speculative.

(87) Comment: The Orient Point ferry has been steadily improving its service and its proposed new boats and terminal improvement should bring further improvements.

Response: No response required.

BEFORE THE
INTERSTATE COMMERCE COMMISSION
IN THE MATTER OF
MASCONY TRANSPORT AND FERRY SERVICE, INC.
INITIAL OPERATIONS
NEW LONDON TO GREENPORT, L.I., N.Y.
DOCKET NO. W-1270

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COMMENTS OF MASCONY TRANSPORT AND FERRY SERVICE, INC. TO DRAFT ENVIRONMENTAL IMPACT STATEMENT

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I

Now comes Mascony Transport and Ferry Service, Inc., hereafter referred to as Mascony, and files these comments to the Draft Environmental Impact Statement served by the Interstate Commerce Commission on February 3, 1976.

II

In order to fully understand the position of Mascony with respect to the comments, it is necessary for Mascony to add certain data to the description of action in this proceeding. It is believed that such data will enable the Commission to more fully understand the comments presented herein.

Page 12 of the Draft Report states that Mascony's mooring facility at Greenport, L.I., N.Y., extends approximately 350' into Greenport Harbor. It should be noted that there are presently, other facilities that extend 365' into Greenport (1) Harbor as depicted in Figure 5 of the Draft Environmental Statement. Thus, the length of the facilities proposed by Mascony would be less than other existing pier facilities.

At Pages 13, 15, and 53, the Draft Environmental Impact Statement discusses the site and traffic patterns with respect to Mascony's proposal. Mascony has at all times been amenable and acceptable to any traffic pattern that would be suggested by the Village of Greenport, L.I., N.Y.

Reference to Figure 5 would show that an alternative traffic pattern also exists. Such alternative pattern would allow vehicles intending to board the ferry to enter Wiggins (2) Street as far west as Ninth Street, proceed through Mascony's property at Third Street onto Front Street, and then proceed through the 55' alleyway to board the ferry. This would eliminate any purported congestion at the intersection of Third and Front Streets. Similarly, Mascony is amenable to a traffic flow whereby outbound traffic consisting of passenger vehicles would exit along the lines represented in Figure 5 and commercial vehicles would exit from the 55' alleyway. Attached hereto as Appendix "1", is an alternative method of traffic flow as described above.

Mascony has at all times extended itself to the Village of Greenport, L.I., N.Y. with respect to scheduling departures (3) and arrivals so as to minimize any possible adverse traffic patterns.

Mascony submits that the data furnished to the Commission by Cross Sound Ferry Service, Inc. is misleading. Although the Draft Environmental Impact Statement states that Cross Sound Ferry Service, Inc. operates 5 vessels, only one to three vessels are available at any single period of time. As a general rule, only three vessels are available during peak periods. (4) The vessels described as Motor Vessel [illegible] and Motor Vessel Manitou are not capable of commercial traffic because of a weight limitation of 53,800 lbs. carrying capacity. Thus each can only accommodate at a maximum, 12 automobiles. Such data was furnished to Mascony by the United States Coast Guard. In general, commercial traffic, represented by trucks, tractors, and trailers can only be accommodated on the motor vessels Orient and Plum Island. The Motor Vessel Caribbean Ferry is also inadequate. People were not permitted to remain in their vehicles during passage. (See Appendix [illegible] for photo of Motor Vessel Caribbean Ferry)

The data furnished to the Commission by Cross Sound Ferry Service, Inc. with respect to its 1975 capacity and traffic statistics is also misleading. Although Cross Sound stated that it operated at 70% of vehicle capacity no mention was made (5) of patrons who had advance reservations and did not show for their scheduled departure. Of equal importance, no data was made available showing the less-than-capacity loads on early morning and late evening departures. Additionally, no data was supplied showing the reduction in Commercial traffic apparently caused by the 140 % rate increase allowed by the Commission in 1974 for unloaded commercial units. Mascony submits that the vessels operated by Cross Sound Ferry Service, Inc., are the same vessels that it acquired from its predecessor New London Freight Lines, Inc. Capacity loads were handled by Cross Sound Ferry Service, Inc. during 1975, and tremendous lines of members of the public and their automobiles were left behind at either Orient Point, L.I., N.Y. or New London, Conn. It is obvious that the Commission was not furnished with data concerning the number of persons and automobiles left behind or cancelled departures. Were the Commission to require additional proof, Mascony would be able to furnish further evidence including photographs taken during 1975 which would show that large lines, continuous waiting, and congestion at New London, Conn. and Orient Point, L.I., N.Y. existed in the same manner as has existed for numerous years and presently reflected in the official record and exhibits presented by Mascony during the course of the oral hearing.

(6) Although the present Cross Sound Ferry Service, Inc. has instituted a "reservation" system, it has not alleviated the problem, but instead has added to it. The Administrative Law Judge, David Allard, best described implementation of a reservation system by a carrier with limited capacities and equipment. (Page 10 of the initial decision)

Cross Sound is now taking reservations up to the capacity of their vessels. (see appendix '2' for Cross Sound 1976 schedule)

It is further evident that the information pertaining to Greenport, as contained in the Draft Environmental Impact Statement was furnished to the Commission by a party or certain parties of the Village of Greenport that oppose the ferry service.

At Page 21 of the Draft Environmental Impact Statement, the Commission mentions the Greenport Village Comprehensive Development Plan as purportedly submitted to the Commission by the Greenport Village Planning Board. Of particular significance are the remarks regarding plans for a marine museum to be constructed on the east side of the Village of Greenport. The fallacy in the information furnished to the Commission by the Greenport Planning Board is obvious

The underlying record in this proceeding convincingly shows that the Greenport Village Board of Trustees desired the ferry service and had actually encouraged Mascony to submit an appropriate proposal and application before the Interstate Commerce Commission in order to conduct the proposed ferry service between Greenport, L.I., N.Y. and New London, Conn. The underlying record further shows that Mascony, based on resolutions and assurances by the Greenport Village Board of Trustees, acquired property in the Greenport area for the specific purpose of conducting the proposed ferry service. The data furnished to the Commission (with respect to the Draft Environmental Impact Statement) was furnished by a single individual, who was the president of the Greenport Planning Board and who personally is vehemently opposed to the proposed ferry service. Indicative of such opposition by the president of the Greenport Planning Board is the attitude taken by certain individuals in the Village of Greenport in November 1975, the approximate time that the Commission conducted its environmental impact study. Attached hereto as Appendix "6" is a copy of postcard mailed to certain businesses by the Greenport Business Association wherein said postcard stated on its reverse side that the president of the Greenport Planning Board was to speak to the Greenport Business Association with the subject being the Mascony Ferry, and "if you don't want a ferry jammed down your throat, please attend this meeting".

The "negative" attitude taken by the president of the

Greenport Planning Board is further apparent based on his statements to the Greenport Planning Board at a meeting in early November 1975. Attached hereto as Appendix "7", is a copy of an article appearing in the Suffolk Life (newspaper), Greenport Long Island, on November 16, 1975. Evidently, the president of the Greenport Planning Board fancies himself as the adjudicator of the ultimate decision. The conflict between the Village Board of Trustees and Planning Board is also apparent when viewed in light of a meeting held by the Village Board of Trustees in April 1975. Attached hereto as Appendix "8", is a copy of an article appearing in Suffolk Life, April 13, 1975. Said article pertains to the prior denials of Mascony's applications and of considerable importance is the fact that the Greenport Village Board of Trustees were of the opinion that the traffic situation would not be serious.

(9) While the Draft Environmental Impact Statement, on page 21, indicates that Suffolk County, Long Island and in particular, the Village of Greenport has been labeled a depressed area by the county because of its higher unemployment rates, lack of municipal facilities, and lower family income, the cold harsh fact is that Greenport is becoming a "ghost" town. There is absolutely nothing within the Village of Greenport, Long Island to attract business or tourism because of Greenport's present state of condition. Its youth are leaving the town and never return. This is further apparent by an 18% decrease in population between the years 1950 and 1970.

That the Village of Greenport has failed to induce and/or attract business and tourism is further evident from the studies conducted by the Automobile Club of New York at the request of the Village of Greenport in 1961 (page of 36 of Environmental Draft Impact Statement). That study recommended the institution of a one-way traffic system in the downtown area. For a period of approximately 15 years, the Village of Greenport has done absolutely nothing with respect to any suggestions made concerning its traffic flow. Although the Comprehensive Development Plan recommends widening and realignning certain streets in the downtown area and restricting on-street parking on Front Street in order to improve downtown traffic flows, the Village of Greenport has again done nothing with respect to this matter. As a matter of fact, Mascony had suggested to the Village of Greenport that it restrict the parking at or near the entrance to the ferry by eliminating the parking meters. The Village of Greenport has neither acknowledged nor indicated any desire to take this matter under consideration.

(10) Mascony submits that the elimination of the on-street parking on Front Street would certainly go a long way into alleviating any alleged traffic congestion.

(11) It is further apparent that if the curb parking on Front Street were removed, no problem would exist with the proposed plan of entering and exiting from the ferry. Neither would any traffic problems result with the alternative re-routing as reflected in Appendix "1" attached hereto. If the Village of Greenport were to adhere to its Comprehensive Development Plan, there would not be any problem in restricting the parking on Front Street. Such would not entail any outlay of capital expenditures nor require funding from any agency such as that

in connection with the proposed marine museum which in and of itself, is entirely speculative.

At pages 23 and 24 of its Draft Environmental Impact Statement, the Commission discusses a potential docking site toward the south side of the Long Island Railroad pier located approximately 500 feet west of Mascony's present location. Mascony has for several years approached the Long
(12) Island Railroad Company for the purpose of leasing certain of the Long Island Railroad property for the use as a pier. As a matter of fact, on July 5, 1974, Mascony and its representatives met with members of the Village of Greenport and personnel of the Long Island Railroad Company to discuss the Mascony Ferry site. The Long Island Railroad personnel did not want to discuss the matter.

As recently as February 11, 1976, another approach was made to the Long Island Railroad concerning the lease of the railroad's property at Greenport, Long Island, New York. The Long Island Railroad replied to the correspondence of Mascony by letter dated March 1, 1976, a copy of which is attached hereto as Appendix "9".

On March 5, 1976, Mascony had requested the fathers of the Village of Greenport to discuss the matter further in connection with the Long Island Railroad's letter of March 1, 1976. A copy of that letter is attached hereto as Appendix "10". As of this date, Mascony has not received any reply.

It should be noted that there might be a slight misunderstanding on the part of the Commission with respect to the
(13) railroad property. Mascony's proposal to the Long Island

Railroad embraces that area south of the Long Island Railroad pier which is indicated in Appendix "1" attached hereto. Such property is already bulkheaded, would require minor repairs, and minimum dredging.

At page 35 of the Draft Environmental Impact Statement, concern is expressed concerning heavy truck traffic over First Street in Greenport, Long Island. Apparently, the Commission was not furnished information to the effect that
(14) First Street is presently used by heavy trucks in connection with the transportation of freight to the various stores and supermarkets located in that area and whose receiving entrances are reached by traversing First Street.

III

In evaluating its comments, it is requested that the Commission consider the ferry operations between Woods Hole
(15) (Falmouth), Mass. and Martha's Vineyard, Mass. Such ferry service is conducted by the Woods Hole, Martha's Vineyard, & Nantucket Steamship Authority. Attached hereto as Appendix "11", is an analysis of the revenue freight, trucks, passenger cars, and passengers handled by the Woods Hole Martha's Vineyard , and Nantucket Steamship Authority for the periods January through November of 1972 and 1973. Access to the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority is via a two-lane highway, identified as Massachusetts Route 28 in the southeastern portion of Massachusetts. Said Route 28 is the only means of access to the Woods Hole, Martha's Vineyard, & Nantucket Steamship Authority and the only means of egress from its terminal. Massachusetts Route 28, leading to and from the Woods Hole, Martha's

Vineyard, and Nantucket Steamship Authority at Woods Hole (Falmouth), Mass. is inferior to Front Street, Greenport Long Island. In spite of Massachusetts Route 28 and its type of highway, Appendix "11" shows that in 1973, more than 105,099 passenger automobiles had no difficulty in getting on and off the ferry during the so-called "peak" summer season. Such is reflected in the following tabulation:

	1973
June	20,911
July	28,333
August	31,641
September	24,214
	105,099

On an annual basis, this ferry service carried, in 1973, a total of 184,879 passenger automobiles and 29,917 trucks.

There was also an increase in demand of the ferry service between Woods Hole (Falmouth), Mass. and Martha's Vineyard during 1974 and 1975 and this required an additional vessel to be placed into service by the Woods Hole, Martha's Vineyard, & Nantucket Steamship Authority.

Certainly, if a ferry service, such as presently existing between Woods Hole (Falmouth), Mass. and Martha's Vineyard can operate with no attendant problems thereto, no sound reason exists to arrive at a conclusion that Mascony's proposed ferry service would not be feasible.

At page 48 of the Draft Environmental Impact Statement,
concern is expressed concerning ambulances being ferried over
(16) from Greenport, Long Island to Shelter Island by the Shelter
Island Ferry. As the Commission recognized, there are alternative

means of access to the Shelter Island Ferry. However, the Commission should be aware of the fact that radio communication is always available with the Mascony vessels which are radio equipped. In addition, as a recent as December 1975, the Shelter Island Greenport Ferry Service instituted radios in its vessels in order to improve emergency connections with the ferry for ambulance services. There is nothing to prevent cooperation among the appropriate medical facilities and/or hospital facilities at Greenport, Long Island, the Mascony Ferry Service, and the Greenport and Shelter Island Ferry Service for radio communication when emergency conditions exist so as to allow ambulances to move freely between Greenport, Long Island and Shelter Island. Attached hereto as Appendix "12" is an excerpt from the Suffolk Times, December 24, 1975 reflecting the fact that the Shelter Island and Greenport Ferry Service had instituted a radio service.

Page 48 of the Draft Environmental Impact Statement raises the issue of the ability of Mascony's vessels to navigate in Greenport Harbor. The present speed limit in Greenport Harbor
(17) is 5 miles per hour. Mascony's vessels are extremely maneuverable and with the horse power of its engines, can stop in a distance equal to the length of the vessel. Under such conditions, especially in view of the speed limits, the danger to fishing or pleasure craft is mitigated.

The socio-economic aspects as reflected on page 49 of the Draft Environmental Impact Statement, encompass and embrace the attitude of the Greenport Planning Board and not the Village Trustees. As previously stated, there is a conflict between the Greenport Planning Board and the Greenport Village Trustees. The Greenport Planning Board takes a "negative" attitude whereas the record will show the Village Trustees take an entirely "positive" attitude toward the ferry. While Mascony contends that the data and statements given to the Interstate Commerce Commission in connection with its environmental draft impact statement are those of a single individual of the Planning Board, Mascony does wish to call to the attention of the Commission that a certain member of the Planning Board had requested a job with Mascony should the ferry service go into effect.

There is no question that Greenport is a severely depressed area. The economic situation of Greenport is such that is slowly becoming a sparsely populated area with no inducement for travelers, business, or any other enterprise. (18) There is nothing to encourage economic and social activity. Expansion by private enterprise is nil. The proposed ferry service might very well be that economic thrust into the Village of Greenport which would encourage the establishment of businesses, tourism, and private enterprise, notwithstanding the fact that it would be beneficial to other members of the public through expansion of their markets into and/or out of New England.

IV

It is obvious that there is a need for the proposed Mascony ferry operation between Greenport, Long Island, New York (19) and New London, Connecticut. At page 54 of its Draft Environmental Impact Statement, the Commission refers to the Tri-State Regional Planning Commission study issued in December 1975. Although that study concluded that the overall feasibility of running a ferry service between New London and Greenport was poor, it was based primarily on the economic costs, and predicated on state and/or federal funds. That study did not mention private enterprise such as that proposed by Mascony. The Draft Environmental Impact Statement does not refer to the statement accompanying the final report of the Tri-State Regional Planning Commission, such statement having been made by Raymond Schuler, State Transportation Commissioner, New York Department of Transportation. Attached hereto as Appendix "13", is a copy of any article appearing in Newsday, Friday, December 19, 1975 relative to Mr. Schuler's position. In essence, Mr. Schuler's position is that there is a need for improved ferry service and that there is a need to end the total reliance on east-west land routes through New York City for access to Connecticut and New England.

V

At page 57 of the Draft Environmental Impact Statement, the Commission suggests possible operational changes through obtaining a right-of-way over the property of East End Supply. While such has been considered by Mascony and approaches have (20) been made, East End Supply has not been willing to grant any easement. As a matter of fact, East End Supply appeared in opposition to the entire proposal through the filing of a petition for leave to intervene. Mascony is also aware that East End Supply does not favor the proposed Comprehensive Development Plan which would result in the taking of East End Supply's property for a "pedestrian mall".

Mascony realizes that not all of its vessels are dieselized.
(21) However, recognizing the fuel economies of diesel engines, Mascony would convert to diesel if it is authorized to perform the proposed service. This would result in further fuel conservation.

At page 59, the Commission discusses the irreversible and irretrievable committments of resources which would be involved should the proposed action be implemented.

The Commission must not lose sight of the fact that Mascony was induced and encouraged to institute a ferry service at Greenport, Greenport Long Island by the Greenport Village Trustees. It expended substantial sums of money in acquiring property for the proposed ferry. During the entire period that the application has been pending before the Interstate Commerce Commission, Mascony has allowed the Village of Greenport to utilize its existing properties for off-street parking at no charge and no cost to the Village or to any other member of the public. The properties were acquired as a direct result and understanding received from the Village Trustees that certain of the properties would be used for parking and staging facilities for those desiring to use the proposed ferry. It is therefore difficult to comprehend the position taken by the Greenport Planning Board, which position conflicts with that of the Village Trustees. Certainly, the Village Trustees must have known of the Comprehensive Development Plan wherein the real property acquired by Mascony for a ferry service purportedly represented an ultimate goal of a "pedestrian mall".

Viewing the entire proposal, including the issue of public convenience and necessity, the environmental impact upon the communities involved in the proceeding would be beneficial to the general public.

Respectfully submitted,

Frank J. Weiner
Attorney for Mascony Transport
and Ferry Service, Inc.

15 Court Square
Boston, Mass. 02108

March 19, 1976

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.,

INITIAL OPERATIONS--NEW LONDON TO GREENPORT, L.I., N.Y.

COMMENTS
ON
DRAFT ENVIRONMENTAL IMPACT STATEMENT

Come now Cross-Sound Ferry Services, Inc. ("Cross-Sound") and Bridgeport & Port Jefferson Steamboat Co. ("B & PJ") and, pursuant to the notice to the parties which was served together with the Draft Environmental Impact Statement ("Statement") in this proceeding on February 3, 1976, submit their responsive comments to the representations made in the statement.

I

INTERESTS OF THESE RESPONDENTS

Cross-Sound is the successor in interest to New London Freight Lines, Inc. ("NLFL") the carrier that provided ferry service between Orient Point, N.Y. and New London, Conn. for some two decades until it sold its operating authority and certain other properties to Cross-Sound late in 1975. That transaction was approved by the Commission in Finance Docket No. 27846. NLFL has participated fully in this proceeding since its inception as a protestant. By motion filed on October 29, 1975, which the Commission has not yet acted on, Cross-Sound has requested that it be substituted as a party in this proceeding in lieu of NLFL. Since March 22, 1975, Cross-Sound has been providing a year-round ferry service carrying passengers, automobiles, trucks, and miscellaneous vehicles between Orient Point, N.Y. and New London, Conn. Such operations were performed first under temporary authority pending approval of the transfer of the NLFL operating authority and, since approval of the transfer, under the operating authority which was acquired for NLFL and has since been reissued to Cross-Sound in Certificate No. W-1290.

B & PJ operates ferry service between Bridgeport, Conn. and Port Jefferson, N.Y. in the transportation of passengers and vehicles. It has been a protestant in this proceeding since its inception and has fully participated in every stage of it.

II

COMMENTS IN RESPONSE TO STATEMENT

Basically these respondents believe the Statement to be a responsible and objective evaluation of the potential consequences of the Mascony proposal. It obviously reflects a very extensive and conscientious effort to fulfill the Commission's statutory mandate. The Statement does, however, contain a number of what these respondents consider to be serious deficiencies which are primarily the result of misinformation rather than faulty analysis. The comments of these respondents are intended to bring to the attention of the Commission's staff what they consider to be the significant erroneous factual assumptions.

The Statement properly recognizes that the most serious adverse environmental consequences of the Mascony proposal would occur at Greenport. What it does not recognize, however, is that its assessment of those consequences is based upon operating conditions that are considerably more favorable than those which actually exist. For example, in discussing access to and egress from Mascony's proposed terminal site at Greenport the Statement repeatedly makes reference to a 55 foot alley connecting the landing site with Front Street. Even assuming such a 55 foot alley, the Statement recognizes that serious traffic flow problems would be created. The fact is, however, that there is no 55 foot alley and there is no reasonable prospect that one will ever exist.

The Statement suggests that the 55 foot alley would run between the Greenport Post Office and Mitchell's Restaurant and would be created by partial demolition of an unused banquet hall. (Statement, pp. 13-15) The alley in question is currently 16 feet wide with an effective usable width of 14 feet (Ex. 86, tr. 2180-81) which, according to the sworn testimony of a staff engineering expert of the New York State Department of Transportation, is too narrow to allow access or egress by standard size trucks (tr. 2186).

Although Mascony intended to widen the alley, subsequent events have made such action impossible. Indeed, Mascony attempted to demolish the building adjacent to the alley on January 13, 1976, but was restrained from doing so under threat of arrest for violation of Village ordinances. Mascony's only rights in the so-called Mitchell property were derived from Advine Realty Corp. which had purchased the property from the (22) Mitchell family subject to a mortgage. That mortgage was foreclosed due to default by Advine and the Mitchell family has reacquired the property at the foreclosure sale which took place earlier this year. Attached hereto as Appendix I is a letter from the current owners of the property making clear that Mascony's interest in the Mitchell property, which was derived from Advine's former ownership has now been terminated and that the present owners of the property have no intention of allowing Mascony to use it in connection with its proposed operation.

Obviously, the fact that Mascony no longer has an available landing site in Greenport represents a fundmental change in circumstances which must be considered in preparation of a final statement.[1/]

[1/] The Statement suggests that the Long Island Railroad pier could conceivably be used as an alternative site (Statement, p. 23). It (23) notes that the facility is under a 20-year lease to Suffolk County. These petitioners have been advised by Suffolk County that the lease contains provisions prohibiting commercial activity such as the docking of large vessels of the type that Mascony proposes to operate. Thus, there would appear to be no realistic alternative available to Mascony.

At various points throughout the Statement reference is
also made to Mascony's alleged plan to have attendants control
traffic flow on the streets of Greenport. These respondents
vigorously object to the assumption inherent in the Statement
(24) that such attendants would, in fact, be available on the grounds
that there is no provision for the expense of such attendants in
the financial projections relied upon by Mascony in its attempt
to demonstrate the feasibility of its proposed operation.

The erroneous factual presumptions with respect to proposed
operations at New London are as serious as those involving
Greenport. At New London the Statement considers two alternative
terminal sites. What the Statement characterizes as "Mascony's
primary site" is a property at Bank and Sparyard Streets. This
(25) property was identified as the so-called "DeNoia property" at
the hearings in this proceeding. Here again the Statement is
founded upon inaccurate information in that it assumes that
Mascony holds an option to purchase this property (Statement, p. 11).
Attached hereto as Appendix II is a reply to an inquiry by these
respondents recently received from the attorney for the owners
of the property in question stating unequivocally that Mascony
no longer has any interest whatsoever in the DeNoia property and
has not had any such interest since October 1, 1974. Thus, any
environmental impact assessment based on the assumed utilization
of that property is meaningless.

The alternative site considered by the Statement is the New London City pier. The evaluation of this site contained in the Statement presumes that the DeNoia property would be available for use as a staging area. Lack of availability of that property requires reevaluation of the suitability of this site in view of the lack of vehicle staging capability.

Also the Statement fails to give proper recognition to the fact that the city pier is not available for permanent use by Mascony. In a recent action the New London City Council, by a divided decision, decided to renew the Mascony lease on the pier for only six months with no option to renew. (See Appendix III)
(26) In a news report in the New London Day of the meeting of February 17, 1976, at which the City Council took such action it was reported that "The Council stressed it viewed City Pier as only a temporary terminal for the proposed service." Thus, the finding at page 25 of the Statement that "the location of the proposed ferry service at the municipal pier would be consistent with city plans in the area" is diametrically contrary to the true situation.

Other important factual errors concerning the New London City pier include the assumption that the pier is suitable for loading and discharge of vehicles from Mascony's vessels. The Statement
(27) acknowledges that the end of the pier is in damaged condition which renders it unsuitable for docking of vessels but suggests that Mascony can dock along the north side of the pier. (Statement, pp. 8-9) What this finding overlooks is the fact that the Mascony vessels are all bow and stern loaders and not susceptible to being loaded or unloaded while laying alongside rather than at the end

of the pier. The Statement also fails to give proper consideration
to the existing traffic generators already present at the pier.
These include the Eugene O'Neill Theater Barge which is tied up
(28) on the south side of the pier and the Fisher's Island Ferry
which uses the pier. Both of these facilities generate substantial
quantities of traffic during the summer months. When the Mascony
traffic (which can not be staged on the DeNoia property in which
Mascony no longer has any interest) is added, traffic congestion
would be far greater than the statement reflects.

Finally, it is perhaps worthy of note that the Statement assumes
that 65 passenger cars will be staged on the pier whereas the lease
under which Mascony proposes to use the pier specifically provides
(29) that no more than 60 vehicles may be staged on the pier. While this
in itself might not be significant, it is illustrative of
the inaccuracies that permeate the basic factual information
provided to the Commission's staff by applicant.

The same basic deficiency exists with the information furnished
in connection with the operation of applicant's vessels. To
begin with, the Statement assumes the operation by applicant of
three of its four vessels. However, two of applicant's vessels
(30) have been widely advertised for sale during the last six months
thereby suggesting that applicant's present intention as to its
scheme of operation is fundamentally different from that described
in the Statement.

(31) Far more serious is the fact that the Statement assumes a
schedule of operation which is totally unrealistic. It assumes

a running time of 90 minutes from dock to dock in each direction. However, based on applicant's own course and speed data it was demonstrated by expert testimony that a minimum running time would be 124 minutes in each direction (Ex. 98, p. 10). Although this expert testimony was subjected to vigorous cross-examination (tr. 2166-70) it was not in any way compromised. Indeed, it was made clear that applicant's projections apparently assumed such unrealistic operating procedures as having its vessels hit the landing site at full cruising speed (tr. 2170).

Loading and unloading time also appears to be grossly underestimated. According to the schedule set forth at page 10 of the Statement Mascony would provide as little as 30 minutes to
(32) discharge and reload its vessels. This would require unloading of as many as 100 cars and the loading another 100 cars in 30 minutes which works out to a rate of approximately seven cars per minute. Such an assumption would be ludicrous even under the most ideal circumstances.

Although the Statement, in projecting fuel savings, relies upon figures which have repeatedly been demonstrated to be overly optimistic, these respondents see no purpose in belaboring this point in view of the conclusion that any fuel savings would
(33) be insignificant even when such figures are used. The only observation that respondents would make in this regard is that the Statement does not give proper recognition to the fact that existing service is operating at far less than full capacity and a substantial portion of any projected fuel

savings could therefore be achieved by better utilization of existing service without the offsetting utilization of substantial quantities of fuel for applicant's vessels.

Other unrealistic features of the Statement include the assumptions that Mascony will install holding tanks in its vessels, that it will install fail-safe devices at the points where its (34) traffic would cross the tracks of Penn Central in New London, and that it will provide attendants to control traffic flow in the streets of New London and Greenport. There is absolutely no basis for such presumptions in view of Mascony's performance to date. None of these items were provided for in Mascony's financial projections.[2/] More important, during the years that its application has been pending and its vessels have been lying idle, Mascony has made no effort to install holding tanks in its vessels. If it had any real intention of doing so one would expect that it would do so now when the vessels are available for such modification rather than after operations are commenced.

In the interest of complete accuracy it would also be appropriate to update and correct certain information concerning (35) Cross-Sound. With this purpose in mind there is attached hereto as Appendix IV a copy of Cross-Sound's 1976 schedule. At page 18 the Statement suggests that only Plum Island and Orient are

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[2/] Subsequent events provide strong additional reasons for concluding that such expenditures will never be made. For example, there appeared in the February 19, 1975, edition of The Suffolk Times a notice that certain of Mascony's Greenport property would be sold for failure to pay taxes. Also, the records of the Circuit Court for the 10th Judicial Circuit of Connecticut reflect that judgment in the amount of $1,744.21 was entered against Mascony for failure to pay for marine survey work performed by DiCeasare-Bently-Welling in connection with improvements to Mascony's proposed New London terminal.

capable of carrying trucks. In fact, Carribean Ferry is fully capable of carrying trucks and regularly does so. At page 18 the Statement also suggests that Cross-Sound has only just begun to transport trucks on its winter schedule. This statement is somewhat misleading since the 1975-76 winter is the first winter that Cross-Sound has been in operation and during that entire season it has continuously held itself out to transport trucks and is committed to continuing to do so.

Finally at pages 49 and 58 of the Statement it is suggested that the proposed Mascony operation would stimulate tourism, promote commerce, and generally have a beneficial impact on productivity. Respondents respectfully submit that there is no
(36) rational basis for such conjecture in view of the fact that the capacity of existing service exceeds demand by a substantial margin. Although there admittedly are some occasions during peak midsummer holiday periods when all vehicles can not always be accommodated on the next vessel, this presents no problem for either commercial users or pleasure travellers who can make advance reservations on the sailing of their choice. If, as is clearly the case here, existing capacity already exceeds demand, their can be no basis for concluding that a still greater excess would stimulate more traffic. Indeed, there is sound basis for concluding just the opposite since dilution of revenue traffic would inevitably require increases in rates which would tend to discourage rather than encourage additional traffic.

In conclusion, respondents submit that the Statement, while admittedly the product of thorough and conscientious effort, is fatally deficient due to its reliance upon inaccurate information. Respondents respectfully request that in order to cure this basic shortcoming the Commission's environmental staff be directed to verify the information set forth herein with sources independent of applicant and, upon such verification, issue a final environmental impact statement which is predicated upon current, realistic, and accurate data.

Respectfully submitted,

CROSS-SOUND FERRY SERVICES, INC.
THE BRIDGEPORT & PORT JEFFERSON
STEAMBOAT CO.

By__________________________
Peter A. Greene
Their Attorney

Of Counsel:

MACLEAY, LYNCH, BERNHARD & GREGG
1625 K Street, N.W.
Washington, D.C. 20006

Dated: March 22, 1976

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

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Mr. Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Oswald:

We have reviewed the draft environmental impact statement (EIS) for Mascony Transport and Ferry Service, Inc., Initial Operations--New London, Connecticut to Greenport, L.I., New York. The following comments are offered for your consideration in preparing the final EIS.

(37) The proposal may lead to contravention of ambient air quality standards in the Village of Greenport. Specifically, the auto traffic that is currently projected to queue in the local streets of Greenport while waiting to board the ferries may increase ambient carbon monoxide concentrations to dangerous levels. The draft EIS recognizes this potential problem and discusses a number of traffic flow improvements which may mitigate this possible effect. However, since no air quality analysis is presented in the draft EIS, it is not possible to quantitatively determine the proposal's impact upon ambient air quality. We believe that the applicant has two alternatives, either begin service after the recommended traffic improvements have been made, or demonstrate in the final EIS by means of diffusion analysis that the impact of ferry operations upon the unimproved traffic scenario does not interfere with maintenance of the carbon monoxide standard.

(38) Contravention of ambient air quality standards is not expected at the New London site since the EIS states that traffic congestion will not be a problem. Because the absolute effect of the ferry service upon traffic is small (approximately 100 cars per ferry ride, three to eight times a day), the air quality impact of the ferry upon an uncongested thoroughfare should be within acceptable limits.

(39) In order to further limit unwarranted air pollution and fuel consumption, we recommend that unnecessary engine idling be prohibited while cars wait to board the ferries.

(40) EPA is also concerned about the potentially serious problem that increased heavy-truck traffic induced by this proposal may have on sewer pipes near the site in Greenport. As recognized in the EIS, these pipes

are constructed of vitrified clay with cement joists, and are less than 3 feet under the road surface in the vicinity of the ferry unloading point. Heavy-truck traffic could result in excessive subsurface loads and vibrations which may cause the sewer pipes to rupture, discharging raw sewage into the surrounding area and creating a health hazard. The EIS states that this risk has been reduced to "some extent" by Mascony's proposal to divert commercial traffic away from this area. We believe that the term "some extent" is much too vague and should be explained in detail in the final EIS. Also, the Greenport Sewer Department should be contacted to determine if there are other areas with similar conditions and if certain measures can be taken to alleviate the problem. The results of subsequent discussions should be included in the final EIS.

(41) Mascony's first choice for a docking site in New London is at the Bank and Sparyard pier directly east of the Penn Central main line railroad tracks. However, objections have been raised by the Connecticut Department of Transportation due to the lack of safety devices at the tracks and the necessity for creating a public grade crossing over the tracks. In the event that these difficulties are resolved, Mascony plans to install dolphins adjacent to the stone jetty pier, install a new bulkhead, and fill the area behind the bulkhead with 1915 cubic yards of gravel. The final EIS should discuss the potentially harmful effects of these actions on water quality and aquatic life in the Harbor.

(42) Mascony proposes to discharge sanitary wastes from holding tanks in its vessels either into its own self-contained tanks equipped with a filter system, or into the municipal sewer system at New London. The final EIS should contain a discussion of the level of treatment to be provided by the filter system and the potential impacts of discharging the "filtered" wastes into New London Harbor. Also, the term "acceptable quality" as used in the water quality section should be quantified. On page 43, the draft EIS states that the "largest strain" on the New London treatment plant will be in the summer when Mascony will contribute an additional 6800 gallons a day, but that such an amount "should not prove to be unduly burdensome" on the treatment facilities. The final EIS should elaborate on these statements by providing information on the current capacity of New London's treatment plant and its ability to handle Mascony's wastes at the time of project inception and for the foreseeable future.

In accordance with EPA policy, we have designated this EIS as category "ER-2" signifying environmental reservations concerning the proposed project's impacts (ER) and information in the draft EIS insufficient to fully assess the impacts (2).

Thank you for the opportunity to review this EIS. Four copies of the final EIS are requested for subsequent review. Please contact this office at (212) 264-0854 if we can provide further assistance.

Sincerely yours,

Barbara M. Metzger
Chief
Environmental Impacts Branch

United States Department of the Interior

OFFICE OF THE SECRETARY
NORTHEAST REGION
JOHN F. KENNEDY FEDERAL BUILDING
ROOM 2003 M & N
BOSTON, MASSACHUSETTS 02203

ER 76/105

March 22, 1976

Mr. Robert Oswald
Interstate Commerce Commission
Washington, D. C. 20423

Dear Mr. Oswald:

This is in response to your request for the Department of the Interior's comments on the draft environmental statement for Mascony Transport and Ferry Service (Docket N. W-1270), New London, New London County, Connecticut, and Greenport, Suffolk County, New York.

Recreation:

The draft environmental statement, page 23, indicates that the only
other site that has been given serious consideration as an alternative
docking site is the south side of the Long Island Railroad pier located
approximately 500 feet west of Mascony's proposed location. The Long
Island Railroad abandoned its ferry service from this pier in 1930 and
the pier has remained unutilized since that time. As discussed on pages
(43) 22 and 23, the utilization of this alternative site might be more
consistent with Greenport's plan to develop the waterfront area for
recreational use. We noted also on page 23 that members of the village
planning board have indicated that this alternative docking site would be
less disruptive to the village's development plans to the extent that it
avoids placing ferry traffic in the heart of the village commercial
district. We recommend that further consideration be given to the
possibility of utilizing the south side of the Long Island Railroad
site as an alternative to the proposed Mascony site. We believe that
such an alternative might increase recreational opportunities by enhancing
access to the waterfront. This alternative should be discussed in more
depth in the final statement.

In addition to the above, the New England River Basins Commission recently
published a final report of the Long Island Sound Regional Study. The
(44) report is entitled "People and the Sound, A Plan for Long Island Sound."
On page 45 of Volume I, Summary, of this report, it is stated that "Both
states, with appropriate Federal aid, should either develop or franchise

the development of small, passenger-only ferries or launches to provide relatively efficient, non-destructive access to beaches, and to enhance the recreational experience. They would at the same time provide a non-discriminatory means of limiting public access." We recommend that the final statement reference to this report in discussing the Relationship to Land Use Planning, Policies and Controls of Greenport and New London.

(45) Page 48 of the statement notes that "Another safety issue of potential importance is the ability of Mascony's vessels to navigate in Greenport Harbor without endangering fishing or pleasure crafts. Small craft activity in the harbor is high during the summer months and collisions between such boats and Mascony's vessels are possible." The final statement should contain some in-depth information regarding the safety of small craft in the project area. It may be desirable to modify the application to provide for the safety of fishing and pleasure crafts in the project area. This matter should be addressed in the final statement.

Cultural Resources:

(46) The treatment of cultural resources is reasonably satisfactory. However, to assure no oversight of historic resources being considered for nomination to the National Register of Historic Places, we suggest contacting the State Historic Preservation Officers of both states involved.

We note that this draft environmental statement has been sent to the Connecticut Historical Commission and New York State Department of Parks and Recreation. While the State Historic Preservation Office for New York is assigned to the Department of Parks and Recreation, it may be necessary to specifically address the Commissioner, Division for Historic Preservation.

(47) We would suggest a further check for possible adverse impacts on the Greenport Natural Study area (41°08'N-72°24'W) which has been recommended as a potential National Natural Landmark by the Office of International and Environmental Programs, Smithsonian Institute in its study of the Atlantic Coastal Plains. Mr. Frank Ugolini, Chief, Natural Landmarks and Theme Studies, National Park Service Science Center, National Space Technology Laboratories, Bay St. Louis, Mississippi 39520, can be of assistance in locating and evaluating this potential National Natural Landmark.

We suggest the final environmental statement discuss the commentaries of the State Historic Preservation Officers, the impacts evaluation on the natural resource area and any mitigating measures to be taken to avoid or minimize adverse affects to significant natural and cultural resources.

Fish and Wildlife Resources:

(48) We note on page 12 of the statement that a Corps of Engineers permit will be required to install 14 dolphins in the slip to accommodate vessels during docking. The U. S. Fish and Wildlife Service of this Department will provide separate comments on the Corps permit in compliance with 16 U.S.C. 661-667E. It would be appropriate for the final statement to include some comment from the Service on its probable position on the permit application.

Sincerely yours,

Roger Sumner Babb
Special Assistant to
the Secretary

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

MAILING ADDRESS (G-WS/73)
U.S. COAST GUARD
400 SEVENTH STREET S.W.
WASHINGTON, D.C. 20590
PHONE (202) 426-2262

22 MAR 1976

FILED
MAR 24 1976
INTERSTATE
COMMERCE COMMISSION

Mr. Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Dear Mr. Oswald:

This is in response to your letter of 3 February 1976 concerning a draft environmental impact statement for Initial Operations of Mascony Transport and Ferry Service between New London, Connecticut, and Greenport, Long Island, New York.

The Department of Transportation has reviewed the material submitted and has the following comments to offer:

(49) "Page 4. The indication that an EIS is not the appropriate forum to resolve such issues as to the existence of a public need for the proposed ferry operation and the effect of an additional service on existing water carriers is inconsistent with Section 1500.8(3)(ii) (content of environmental impact statements) of the Council on Environmental Quality Guidelines (38 Fed. Reg. 20550-20562, August 1975; 40 CFR 1500). The public need for the proposed service and the effects on other carriers (water and other modes) should be discussed as a secondary impact since they would most likely involve the stimulation or inducement of secondary effects in the form of associated investments and changed patterns of social and economic activities.

(50) "Page 5. In addition to the length and draft of the vessels, it would be helpful to indicate the displacement of the ships in tons.

(51) "Page 23. Greenport is the easternmost terminus of the Long Island Railroad on the north fork of Long Island. The LIRR runs as far east as Montauk on the south fork.

"pp. 26-37. Traffic Congestion.

(52) The data presented does not support or refute the statements made. Additional specific data and analysis are required to substantiate the opinions reached.

"pp. 37-40. Energy.

(53) While we agree that it is difficult to forecast energy savings, it would seem practicable to compute energy savings offered to commercial operators carrying potatoes, etc., from Long Island to specific New England markets.

(54) "pp. 40-41. It is suggested that additional quantitative documentation be set forth to support the statement that increased traffic will contribute to the problem of air pollution at New London and Greenport.

(55) "Page 44. Mascony as the vessel operator will be required to comply with USCG regulations concerning fuel transfer, etc.

(56) "Page 48. The ability of any vessel to navigate safely in restricted waters is a function of operator skill and adherence to the rules of the road and traditions of the sea. The Rules of the Road must be complied with by all vessels, commercial or recreational. Collisions are possible and do occur when only two vessels meet in open ocean, largely due to operator error. The introduction of commercial service in the area will require more prudent operator attention to the rules of the road, but such attention should be the rule in any event.

(57) "Page 50. The statement that an increase in passenger vehicles and the addition of large vessels in Greenport will be incongruous with the waterfront aesthetics is not supported by any objective data.

(58) "pp. 50-51. What is the noise due to vehicles, etc., at various times in Greenport, New London now? How was this determined? What method of projecting future noise impact was used.

(59) "Page 54. Reference to the Tri-State Regional Planning Commission's study 'Crossing the Sound, a Study of Improved Ferry Service on Long Island Sound' conclusion that the feasibility of service from New London to Greenport was poor is valid. However, the indication that the applicant projects between 200,000 to 2 million vehicles carried annually is inconsistent with the statement on page 39 that Mascony projects that 66,385 spaces would be sold annually. The Tri-State report rated the New London to Orient Point service as having an overall 'good' feasibility. Bridgeport to Port Jefferson, East Haven to Wading River, and Guilford to Centerville were rated fair. All others, except one and including New London to Greenport were rated 'poor'. Sunken Meadow to Sherwood Point was rated 'very poor'.

(60) "It should also be noted that the Final Report of the Long Island Sound Regional Study of the New England River Basin Commission, July 1975 entitled People and the Sound, a Plan for Long Island Sound, indicates that 'Existing ferry service across the Sound between Bridgeport and Port Jefferson and between New London and Orient Point is woefully inadequate'."

The Department of Transportation has no other comments to offer nor do we have any objection to this statement. The final statement, however, should address the comments listed above.

The opportunity to review this draft statement is appreciated.

Sincerely,

D. J. RILEY
Captain, U. S. Coast Guard
Acting Chief, Office of Marine
Environment and Systems

Before The
Interstate Commerce Commission
In the Matter of
Mascony Transport and Ferry Service Inc.
Docket No. W - 1270

Comments on
Environmental Impact Statements
Dated: January 27, 1976

The Planning Board of the Village of Greenport, being a party of record in the Interstate Commerce Commission Proceedings (Docket No. W-1270) considering the proposal of the Mascony Transport and Ferry Service Inc. to operate a ferry service between the Village of Greenport, L.I., N.Y. and New London, Conn., presents the following comments for the record relative to the Environmental Impact Statement drafted by the Office of Proceedings, Interstate Commerce Commission:

1. The Planning Board wishes to express its appreciation to the Office of Proceedings, Interstate Commerce Commission, for the preparation of this Environmental Impact Statement. It feels that, in general, the report is a reasonable statement of the adverse effects of the proposed ferry terminal on the Village of Greenport, indicating that such a ferry terminal would present many difficult or insurmountable problems relative to the traffic problems within this Village. The impact of the proposed traffic loads would additionally present possible health hazards due to the location of sewer and water mains close to the surface of the roads which are proposed for traffic going to or existing from the ferry terminal.

2. The Planning Board must file an objection to including the following (61) statement in the Summary of this report: last sentence - "with fuel savings being projected to be as much as 600,000 gallons annually".

The reason for this objection is that this statement is not consistent with the conclusions of Section 8 (Energy), page 40. Said conclusion states: "Thus, although the proposed service is likely to have a beneficial impact on the energy consumption, it cannot be conclusively deemed significant, particularly in view of the total fuel consumed in the New York/New England area annually."

The implication presented in the summary therefore suggests that considerable conservation of energy would be accomplished by establishing this ferry service, when, indeed such a savings would not necessarily have a significant impact on total energy consumption in this area.

Additionally, the amount of energy consumed by cars or trucks which would utilize this service in the first place simply because the service wo[illegible]d exist, cannot be estimated.

3. The Planning Board must continue to object to the fact that Mascony Transport and Ferry Service Inc., has not yet provided the Planning Board of (62) the Village of Greenport with a site development plan, and has thus denied the Planning Board the opportunity to consider these various proposals formally through due process.

In particular, throughout these Proceedings, at least four (4) alternative proposals have been put forth by Mascony Transport and Ferry Service Inc. Although these have come to the attention of the Planning Board through newspaper coverage or through various communications from the Interstate Commerce Commission, such proposals have not been made to the Planning Board. Because each of these proposals have offered drastically different impacts on the Village, in particular on potential traffic problems, the Planning Board cannot give serious consideration to these proposals since they are consistently being altered.

Since there now exists some question as to the status of the lease between Mascony Transport and Ferry Service Inc. and the owners of the Mitchell complex, which is an integral and necessary aspect of the proposed ferry terminal, the Planning Board cannot give consideration to any proposal including the property in question until such time as said legal questions are answered.

4. The Planning Board further must object to the proposed routing of traffic within the Village of Greenport (eg. p. 15).

4a. Front Street in Greenport is also a State Highway (Route 25).
Mascony Transport and Ferry Service Inc. proposes that, in an attempt to
alleviate traffic congestion during the loading and unloading operations
of vehicles, it would station attendants (employees of Mascony Transport
(63) and Ferry Service Inc.) on Front Street to direct traffic. The legality
of using attendants, who are not duly empowered by the State or the Village
of Greenport to direct traffic is questioned and herein objected to and
may at some time place the Village in a joint Court action.

4b. Mascony Transport and Ferry Service Inc. proposes to direct
disembarking vehicles either along Front Street or across Front Street
along First Street (p. 15). This presents, in addition to the above (4a),
(64) several serious traffic flow problems. One block north of Front Street,
First Street is a residential area. The routing of even intermittent
large volumes of traffic along First Street would be an infringement
upon the rights of the residents of this area. Many of the homes are located
close to the street (including the Public Library which has held reading
classes for young children from time to time), and this traffic would be
objectionable.

4c. The intersection of First, Main and Webb Streets is already one of (65) the most dangerous intersections within the Village of Greenport. Increasing the traffic load at this intersection, even intermittently, would present a very serious traffic safety problem.

4d. The proposal to route some vehicles (how this would be accomplished is not stated) north on First Street, then west on North Street, to connect (66) with Moores Lane is not feasible. North Street does not connect to Moores Lane by public access.

4e. The routing of commercial vehicles (page 29) out through the (proposed) 55 foot alleyway onto Front Street is also objectionable. To turn such vehicles left is very difficult because of the narrowness of Front (67) Street. Such traffic routing would, by necessity, also stop both east and west bound traffic on Front Street, further creating traffic congestion. Furthermore, Mascony Transport and Ferry Service Inc. proposes to utilize the same (proposed) 55 foot alleyway to route cars and trucks from its various peripheral staging areas onto the ferry. Double use of said (proposed) access route would further add to traffic congestion and safety.

4f. The use of the various proposed peripheral staging areas for holding ferry-bound vehicles is also objectionable. All traffic would have to cross the Front Street - Third Street intersection. Although this intersection is controlled by a traffic light, it is the most hazardous (68) intersection in the Village. Vehicles exiting from the Shelter Island Ferry already create traffic congestion at this intersection at 15 minute intervals. Routing cars bound for the peripheral staging areas along Wiggin Street is objectionable because this residential street already is used by traffic waiting to board the Shelter Island Ferry.

5. Mascony Transport a[illegible]erry Service Inc. in their application leads one to believe that the benefits of the New London terminal is to connect to Interstate 95, so that there may be an easy access to or from the New England States. Mascony Transport and Ferry Service Inc. in their application tries to give the impression that the benefits of the Greenport terminal would be (69) for tourism. The Planning Board cannot quite believe that the Village would benefit that much from tourism but that the small community of Greenport would become a direct link between Interstate 95 and the Long Island Expressway. Our road beds, street patterns, citizen's way of life and residential areas should not and could not adapt to the loading of the Long Island Expressway.

6. The Southold Town Board has voted to accept sponsorship of a $300,000 grant from the New York State Department of Transportation for the (70) renovation of the Orient Point ferry terminal facilities. These facilities are maintained by Cross Sound Ferry Co. for the existing ferry service between Orient Point, N.Y. and New London, Conn.

It is the opinion of the Planning Board of the Village of Greenport that these improved facilities at Orient Point, coupled with the greatly improved ferry service now being offered by Cross Sound Ferry Co., will totally eliminate the objections presented during the Public Hearings held by the Interstate Commerce Commission relative to the need for improved ferry service from Eastern Long Island to Connecticut.

CONCLUSION

In conclusion, the Planning Board of the Village of Greenport must continue to object to the establishment of the proposed ferry terminal by Mascony Transport and Ferry Service Inc. in the Village of Greenport. Such a terminal would present many problems within the Village relative to traffic congestion and safety. In addition, because of the proposed expansion of the existing Orient Point ferry service, the Planning Board feels that satisfactory transportation of all vehicles wishing to utilize such a service will be accomplished without detrimental effects on the Village of Greenport arising as a result of the proposed establishment of a new ferry terminal in the Village of Greenport by Mascony Transport and Ferry Service Inc.

FILED
MAR [illegible] 1976
INTERSTATE
COMMERCE COMMISSION

CITY OF NEW LONDON
CONNECTICUT

March 17, 1976

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Dear Mr. Oswald:

re: W-1270, Mascony Transport and Ferry Service, Inc., comments of the City of New London relating to your Draft Environmental Impact Statement relative to proposed ferry service between New London, Connecticut and Greenport, Long Island, New York

Reference is made to the subject Draft Environmental Impact Statement carrying the date of January 27, with a service date of February 3, 1976, received by the Mayor of the City of New London.

Please be advised that I am responding on behalf of the Council of the City of New London to said statement. Pursuant to a vote of our legislative body at its meeting of March 15, 1976 our position is as follows: 1) New London gives its qualified endorsement (71) of this new ferry service; 2) the current lease between the City and Mascony for the City Pier is of a temporary nature and expires on August 31, 1976; and 3) the City reserves the right to require Mascony to vacate the City Pier to a more suitable City waterfront location after September 1, 1976.

If you have any questions with regard to our position, I would be happy to further clarify the same.

Very truly yours,

C. Francis Driscoll
City Manager

D:b

cc: George Powers, Mascony Transport & Ferry Service, Inc., and Mascony Attorney F. T. Londregan

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE OFFICE BUILDING HARTFORD, CONNECTICUT 06115

TO: Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RE: Docket No. W-1270 - Draft Environmental Impact Statement Mascony Transport and Service, Inc., Greenport, L.I., N.Y.

The Connecticut Department of Environmental Protection has reviewed the Draft Environmental Impact Statement for the proposed ferry service between New London and Greenport, Long Island, and submits the following comments. These comments include (1) a brief discussion of the proposed service and the substance of the Draft EIS in describing that service and the need for it and (2) technical comments on the proposal as it pertains to programs of the Department of Environmental Protection.

(72) 1. General Discussion - It appears that a certain as yet unmet demand for additional Long Island Sound ferry service may well exist. Should ferry service as described in the Draft EIS be instituted, DEP hopes that prior to the commencement of such service the outstanding issues concerning routing and terminal location be resolved in order to maintain the safety, welfare and character of the communities impacted.

(73) Present indications are that a general upgrading of service and facilities in terms of more frequent service, increased capacity, and reduced fares would be desirable for the public convenience. Furthermore, both formal and informal studies suggest that there is both a manifest and latent demand for increased service, provided that it is offered in an efficien cost-effective manner.

2. Technical Comments -The following technical comments, concerning the impact of Mascony ferry service on the water resources of Connecticut, are referenced to appropriate pages in the Draft EIS:

(74) Page 25 - In a discussion of the relationship between the proposed terminal location at Shaw's Cove and the renewal efforts already underway there, no mention is made of the New London Hurricane Barrier project, for which a Revised Draft EIS has been prepared - by the Army Corps of Engineers. To gain access to the appropriate pier, vehicles will have to cross over or through a 14.5 foot (above mean sea level)

dike or "L" wall immediately to the north of an at-grade crossing of the Penn Central Railroad tracks. As the effect of shortened sightlines on an already hazardous crossing is likely to pose a public safety hazard, a brief discussion of the relationship of this project to the proposed Hurricane Barrier would seem to be appropriate.

Page 44 - A statement concerning the effects of the addition
of a bulkhead and 1,915 cubic yards of clean bank
gravel describes them as "minor" and "short term."
The effect is not short term; on the contrary, the
(75) bulkhead and fill will permanently alter a portion,
albeit small, of New London Harbor. Although one
may intuitively assume that the impact will be minor;
there is no discussion of the type or amount of
marine habitat to be displaced, or of its role and
importance in the marine ecosystem.

Page 44 - DEP issued a Water Quality Certificate for Mascony's
original ferry slip plans. Due to the proposed
changes in its plans, Mascony must reapply for
(76) Certification before it can be determined that such
alterations will not permanently violate the State's
water quality standards.

We hope these comments are of some assistance to both the Interstate Commerce Commission in its preparation of the Final EIS, and to Mascony Transport and Service, Inc., in the further development of plans for its proposed service.

Jonathan T. Clapp
Environmental Analyst

JTC:iw

RECEIVED
MAR 18 1976
OFFICE OF
INTERGOVERNMENTAL PROGRAMS

interdepartment Message

STO-201 REV. 3-74 STATE OF CONNECTICUT
(Stock No. [illegible]-051-01)

SAVE TIME: *Handwritten messages are acceptable.*
Use carbon if you really need a copy. If typewritten, ignore faint lines

To
NAME Mr. Michael V. Sartori
AGENCY Office of Intergovernmental Programs
TITLE State Clearinghouse Coordinator
DATE March 12, 1976
ADDRESS 340 Capitol Avenue, Hartford

From
NAME Robert W. Gubala
AGENCY Transportation
TITLE Environmental Engineer
TELEPHONE 5704
ADDRESS 24 Wolcott Hill Road, Wethersfield

SUBJECT Review of Draft Environmental Statement--Ferry Service, New London to Greenport, L. I., N. Y. (EIS #150)

As requested in your February 18, 1976 memorandum, I am forwarding the comments of the Connecticut Department of Transportation concerning the Draft Environmental Statement--Ferry Service, New London to Greenport, L. I., N.Y. (EIS #150).

Ridership

Most of the information in the draft statement is dependent on the ridership estimate made on page 17. Footnote 9 indicates that the Connecticut Department of Transportation, Bureau of Planning and Research recorded vehicles being turned away at the New London-Orient Point service on two specific days in 1972.

(77) Since that report was developed, the fare was increased and a sharp drop in ridership has occurred. Another factor in the decrease in ridership could have been the economic conditions since 1972. It appears that a ridership estimate based on two days of counts in 1972 should be more fully documented. The point should be made that providing service will not guarantee ridership. To determine an estimate for ridership, other factors must be taken into account such as fare, crossing time and waiting time.

(78) Another important consideration in determining ridership at this crossing is whether Cross Sound Ferry Service, Inc. is going to increase capacity and service by the purchase of another vehicle. If the purchase were made, the justification for more capacity would be reduced. During the off peak months there would be additional excess capacity at present fare levels.

At-Grade Railroad Crossing

(79) The handling of the at grade railroad crossing into the proposed terminal area is not fully discussed. Both ConnDOT and the PUCA would have to review the crossing design and vehicle movements. At the first hearing, the potential safety problem at this crossing was pointed out because of the North East Corridor Service. It appears that the situation at this crossing would still exist.

*

RECEIV
MAR 15 197
OFFICE OF

SAVE TIME: *If convenient handwrite reply to sender on this same sheet.*

Office of the
STATE
HISTORIC
PRESERVATION
OFFICER
for Connecticut

59 SOUTH PROSPECT STREET • HARTFORD, CONNECTICUT 06106 • 203 566-3005

April 20, 1976

Mr. Michael Falk
Interstate Commerce Commission
Route 3678
Washington, D.C. 20423

Dear Mr. Falk:

The State Historic Preservation Officer for Connecticut has reviewed the draft Environmental Impact Statement, Docket W-1270.

(80) Cultural resources in the City of New London are dealt with on page 45 of this Draft Statement. The Statement includes references to the New London Railroad Station and the Customs House, which are enrolled on the National Register of Historic Places.

(81) However, the inferences that Bank Street will be widened by urban renewal and that traffic congestion on Bank Street will be relieved by a street widening project does not take into account the historic nature of Bank Street. Bank Street itself may be an area which is eligible for the National Register of Historic Places. Any project which would widen the street or contemplate demolition of structures on Bank Street must take into account the historic and architectural resources of the area.

STATE HISTORIC PRESERVATION OFFICER: The person responsible for implementation in Connecticut of the [illegible] [illegible] administered by the Department of the Interior, National Park Service, Washington, [illegible]

I am enclosing a list of properties in New London which have been included in our Connecticut Statewide Inventory of Historic Resources. Several of these structures are clearly eligible for the National Register of Historic Places.

The State Historic Preservation Officer agrees with the
conclusion that additional traffic adjacent to the railroad
station will provide positive effects. However, as State
(82) Historic Preservation Officer, I must object to an environmen
assessment which minimizes impacts by citing future
actions which do not take into account historical and architectu
resources; namely, the widening of Bank Street.

If you have any questions, please do not hesitate to contact Mr. Clark J. Strickland of my staff.

Sincerely,

John W. Shannahan
State Historic Preservation
Officer

CJS/eb
Enclosure

FIGHT THE FERRY

"To Protect Our Homes, Businesses, and Village"

RECEIVE
MAR 17 1976
OFFICE OF
GENERAL COUNS

CO-CHAIRMEN:
Dr. & Mrs. Frank Holmberg, Sr.
Mr. & Mrs. John Ely

SPONSORS:
Mrs. Josephine Bassett
Mr. & Mrs. William Bates
Mrs. Carly Billings
Mrs. Barbara Brannen
Mr. & Mrs. Richard Castantine
Mrs. Olin Edwards
Mr. Otto Fenn
Mayor & Mrs. Harry Fick
Mr. Everett Gaul
Mr. & Mrs. Louis Glickhouse
Mr. & Mrs. Edward Gregory
Trustee John Golaski
Dr. & Mrs. Cecil Joseph
Dr. & Mrs. Irving Kelman
Mr. & Mrs. Charles Keuning
Dr. & Mrs. Daniel Mulvihill
Mr. John [illegible]usko
Mr. & Mrs. Christy Proferes
Mr. and Mrs. Frank Santacroce
Mr. & Mrs. Paul Scheerer
Mr. & Mrs. John Schiavoni
Dr. & Mrs. Robert Semlear
Mr. & Mrs. Joseph Sherry
Mrs. John Steinbeck
Mr. & Mrs. Stewart Waring
Mr. Scott Weiss
Mr. & Mrs. William Wilson

March 11, 1976

Counsel General
Interstate Commerce Commission
Washington, D.C.

Re: Docket No. W-1270
Mascony Ferry Services, Inc.

Dear Sir:

Regarding the draft of Enviornmental Impact Statement, January 27TH., 1976, by your Commission upon, Mascony Ferry Services, Inc. (Docket No. W-1270), application to operate as a common carrier by water, I wish to clarify the following statements in said report.

I refer you to: Paragraph No. 2, Other Points On Long Island, P. 55. The report holds: "Testimony at public meetings regarding the proposal showed a mixed reaction among the townspeople and an organized anti-ferry group in Sag Harbor will attempt to mobilize opinion against the ferry should an application be filed."

Sir, at aforementioned meetings, an inordinately demonstrable group of citizens opposed said ferry service to Sag Harbor. We have catalogued this block of residents and property owners within the Village, by means of individual petition cards. These cards now number over eight hundred citizens. We have, further, taken this protestation to

(83)

FIGHT THE FERRY
c/o General Delivery
Sag Harbor, N. Y. 11963

CO-CHAIRMEN:
Dr. & Mrs. Frank Holmberg, Sr.
Mr. & Mrs. John Ely

SPONSORS:
Mrs. Josephine Bassett
Mr. & Mrs. William Bates
Mrs. Carly Billings
Mrs. Barbara Brannen
Mr. & Mrs. Richard Castantine
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Mr. Otto Fenn
Mayor & Mrs. Harry Fick
Mr. Everett Gaul
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Mr. & Mrs. Edward Gregory
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Dr. & Mrs. Cecil Joseph
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Mr. John Onisko
Mr. & Mrs. Christy Proferes
Mr. and Mrs. Frank Santacroce
Mr. & Mrs. Paul Scheerer
Mr. & Mrs. John Schiavoni
Dr. & Mrs. Robert Semlear
Mr. & Mrs. Joseph Sherry
Mrs. John Steinbeck
Mr. & Mrs. Stewart Waring
Mr. Scott Weiss
Mr. & Mrs. William Wilson

the Village's surrounding enviorns, and we have receieved an overwhelming degree of support.

Congruent to this support, we have receieved the support of the following Citizen's Groups: Sag Harbor Planning And Alliance; Group For America's South Fork; Citizens For The East End; Amagansett Conservation Alliance.

We have drafted a letter, a copy of which is enclosed herewith, for circulation to our Representatives. These included: Governor Hugh L. Carey; Senator Jacob K. Javits; Senator James L. Buckley; Congressman Otis G. Pike; County Executive John Klein; County Legislator Joyce Burland; Easthampton Supervisor Eugene Haas; and Southampton Supervisor Doad Hulse.

In further protecting the interests of this Village, we have opened up communication with The National Historic Trust; as well as retaining our own legal counsel.

If The Interstate Commerce Commission wishes to examine our petition after reviewing this material, or if we might be of any further service to you and your committee, please do not hesitate to contact me.

Very Truly Yours

John M. Ely
Co-Chairman

FIGHT THE FERRY
c/o General Delivery
Sag Harbor, N. Y. 11963

FILE IN DOCKET

MAR 1976
INTERSTATE
COMMERCE COMMISSION

IRVING L. PRICE, JR.
ATTORNEY AT LAW
MAIN STREET
GREENPORT, L. I., N. Y. 11944

AREA CODE 516
477-1016

March 2, 1976

Robert L. Oswald, Esq., Secretary
Interstate Commerce Commission
Washington, D. C. 20006

Re: Mascony Transport and Ferry Service, Inc.--
Interstate Commerce Commission Docket No. W1270

Gentlemen:

East End Supply Co., Inc., objectant, as well as the adjoining landowner to proposed location of ferry at Greenport, New York, acknowledges receipt of Draft Environmental Report dated January 27, 1976.

The purpose of this letter is to reassert all matters brought up by East End Supply Co., Inc. since December of 1973 when it was the "pioneer" third-party opponent in the New York State Environmental proceeding.

(84) East End Supply Co., Inc. has consistantly opposed such location upon the ground that the resulting vehicular traffic would be dangerous in general and practically close off objectant's access to Front Street for long periods. This has been affirmed by the New York State and Suffolk County Highway Departments.

Now the Commission's own Environmental Report bears out East End's continuously asserted contentions, even that the reduction in noise and volume of traffic in New York City and New England would be accomplished by transferring it to rural Greenport; minor to New York and New England (p. 37.), catastrophic to Greenport.

Objectant would only like to raise one question not considered by said report, namely, which traffic by preference would be expedited,

Robert L. Oswald, Esq.
Page 2

March 2, 1976

the ferry's or the traffic already here? If the ferry's traffic is to be expedited, then the general public will be substantially inconvenienced for fewer in number who use the ferry.

The application of Mascony should be denied.

Very truly yours,

Irving L. Price, Jr.

ILP:JM

cc: Mr. Walter Burden (Personal)
East End Supply Co., Inc.

Macleay, Lynch, Bernhard & Gregg

SHIP CHANDLERS   SHIP MODELS [illegible]   NAUTICAL ANTIQUES

S.T. PRESTON & SON, Inc.

MAIN STREET WHARF,
GREENPORT, L. I., N. Y. 11944
TEL 516 [illegible]

FRANK FAGAN
PRESIDENT

FILE IN DOCKET

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COMMERCE COMMISSION

March 12, 1976

OFFICE OF SECRETARY
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FILED
MAR 1 [illegible] 1976
INTERSTATE
COMMERCE COMMISSION

Robert L. Oswald, Esq.
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Re: Docket No. W-1270
Mascony Transport Ferry Service, Inc.

Dear Mr. Oswald:

My name is Frank Fagan and my business is S.T. Preston & Son, Inc. I am the president of the company, which is a substantial retail business in the heart of Greenport on the waterfront. I am writing this letter in response to the environmental impact statement issued by the Commission in the case referred to directly above.

(85) Regarding the Commission's conclusion that the establishment of the Mascony Ferry Terminal in the heart of our village would create "severe congestion problems," I can only express my feeling that it is a vast understatement. During the late spring, summer and early fall months additional ferry traffic on our narrow streets could bring many of our businesses to a grinding halt.

During this period we employ between 26 and 28 people. Their employment would of course be substantially endangered. Other businesses might be forced to accept a lean summer, and then go out of business. Aside from these considerations, the ability of emergency equipment - - fire engines, ambulances and police cars - - to respond to emergencies would be virtually impossible.

Our business, like many others, is on the waterfront,
and we depend on the hundreds of cruising
yachts and sailboats for much of our business. Our
(86) harbor is small, and to bring in ships the size of
the Mascony vessels, would undoubtedly keep many of
our customers, who arrive by water, away from the
village.

If Mascony brings one of their ships into our harbor during July, both the danger to small craft and the very harbor itself, would I think, be apparent.

The ferry at Orient Point, currently operating
to New London has been steadily improving its service.
(87) Its proposed new boats, and the recent allocation
of $200,000 from New York State funds to improve
its terminal should all provide increasingly
better service.

It is to be sincerely hoped that the Commission will use its regulatory powers to prevent the proposed Mascony Ferry operation from bringing fiscal ruin upon our village and environmental ruin to our harbor.

Sincerely,

Frank Fagan

FF/dk

DOCUMENT 324

Served November 19, 1976

30887

INTERSTATE COMMERCE COMMISSION

No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC. INITIAL OPERATIONS—NEW LONDON TO GREENPORT, L.I., NEW YORK

No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC. INITIAL OPERATIONS—NEW LONDON TO GREENPORT, L.I., NEW YORK

Decided November 3, 1976

Public convenience and necessity found to require operation by applicant, in interstate or foreign commerce, as a common carrier by water, by self-propelled vessels in the transportation of general commodities and passengers between the ports of New London, Conn., and Greenport, Long Island, N.Y. Issuance of a limited-term certificate approved upon compliance with certain conditions, and application in all other respects denied.

William J. Augello, Malcolm H. Flash, Robert W. Ginnane, and *Frank I. Weiner* for applicant.

Peter A. Greene, Donald Macleay, Gerard M. McAllister, Irving L. Price, Jr., and *Robert Tasker* for protestants and interveners.

William J. Lynch for intervener, the Connecticut Department of Transportation.

Frederick Godfeder for intervener, the New York Department of Transportation.

John J. Munzel for intervener, the Village of Greenport, N.Y.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS MURPHY, GRESHAM, AND CLAPP

CLAPP, *Commissioner:*

Exceptions to the initial decision and order recommended by the Administrative Law Judge, which exceptions embrace a petition to reopen the record for receipt of further evidence, were filed by applicant, and protestants New London Freight Lines, Inc., and Bridgeport and Port Jefferson Steamboat Co., filed a joint reply thereto.

By application filed May 29, 1973, Mascony Transport and Ferry Service, Inc., of New Bedford, Mass., seeks authority to engage in [illegible]pera[illegible] in [illegible]stat[illegible] fore[illegible]com[illegible]e, a[illegible]om[illegible]car[illegible] by water in the transportation of general commodities and passengers by self-propelled vessels, between the ports of New London, Conn., and Greenport, Long Island, N.Y. The application is opposed by protestants New London Freight Lines, Inc. (NLFL), and Bridgeport and Port Jefferson Steamboat Co. (BPJS), and by interveners, Shelter Island & Greenport Ferry Co., Inc. (SIGF), and East End Supply Co., Inc. In addition, evidence concerning the effect of the proposed operation was presented by interveners, the Connecticut Department of Transportation, the New York Department of Transportation, and the Planning Board of the Village of Greenport, N.Y.

In his initial decision and recommended order, the Administrative Law Judge recommended that the application be denied because of operational considerations: safety at New London and environmental at Greenport. On exceptions, applicant generally contends that the Administrative Law Judge erred (1) in failing to find that the public convenience and necessity require the proposed operation; (2) in his interpretation of section 102 of the National Environmental Policy Act of 1969 (NEPA); (3) in considering the proceeding as one significantly affecting the quality of the human environment; (4) in failing to apply the five criteria of section 102(c) of NEPA to the evidence of record; (5) in failing to comply with the Commission's rules on environmental findings; (6) in finding there would be insufficient safety precautions in New London; and (7) in finding there was an absence in the record of information necessary for environmental determinations. In a joint reply, protestants NLFL and BPJS aver that the findings of the Administrative Law Judge are in accord with the evidence of record and should be affirmed.

PRELIMINARY MATTERS

Applicant sought to introduce certain additional evidence submitted with its exceptions. By order of October 17, 1975, we reopened the proceeding and accepted the tendered evidence. The materials accepted consist of (1) a report by the New York Department of Environmental Conservation concerning the improvement of a ferry slip in Greenport Harbor, Town of Southold, Suffolk County, N.Y., (2) a permit to improve the slip, (3) a letter dated August 15, 1974, from the City Manager of New London [illegible]dic[illegible] tha[illegible] exp[illegible]d C[illegible]oun[illegible]ppr[illegible] for [illegible]city[illegible] enter into a contract with applicant for the use of the municipal pier as a docking facility, and (4) a lease between applicant and the city of New London. In addition, the order of October 17, 1975, also directed that an evaluation be made of the effect of the proposed operation upon the environment in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Such evaluation is set forth in appendix A and has been given full consideration in reaching our decision herein.

Subsequent to the hearings, protestant NLFL sold, as pertinent, its interest in the authority between New London and Orient Point, New York, to Cross-Sound Ferry Services, Inc., of New London.[1] Subsequent to the sale, Cross-Sound filed on October 29, 1975 a petition to be substituted as protestant in this proceeding, and jointly with BPJS filed on November 21, 1975 a petition for reconsideration of the order of October 17, 1975 and to reopen the proceeding for receipt of additional evidence. Applicant filed a reply to the joint petition.

The joint petitioners contend in their November 21, 1975 petition that we erred in our order of October 17, 1975 (1) in finding that the proceeding is in effect unopposed, (2) in reopening the record to receive late-tendered evidence submitted by applicant, and (3) in receiving as evidence of record unverified documents filed in docket No. W-1270 (Sub-No. 2TA). These petitioners allege that the Commission's acceptance of applicant's late-tendered evidence without providing an opportunity for rebuttal deprives them of their right to cross-examine on and respond to such evidence. They note additionally that the documents submitted as appendices N and Q to applicant's petition for reconsideration in docket No. W-1270 (Sub-No. 2TA) are unverified. Petitioners request, as an alternative to setting aside the October 17, 1975, order, reopening for further hearing in order to cross-examine on and respond to the materials admitted into evidence via the October 17, 1975, decision and in order to be permitted the opportunity to submit their own evidence of "changed circumstances." Among those alleged circumstances are various changes, both implemented and planned, pertaining to the operations of Cross-Sound.

Inasmuch as Cross-Sound is the successor to a protestant which has actively and continuously opposed the application, the petition to be substituted for protestant NLFL will be granted.

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[1] The transaction was approved on February 28, 1975, in Finance Docket No. 27846, and petitions for reconsideration were denied by order of Appellate Division 3, on April 29, 1975. Prior to the consummation of the transaction on May 23, 1975, Cross-Sound held temporary authority.

Since Cross-Sound had not attempted to intervene and NLFL had sold its authority, we did consider this proceeding to be virtually unopposed (the pleadings of the commonly controlled joint protestants indicated that they were principally concerned with the effect of this transaction on NLFL) at the time of our October 17, 1975, order. It may be that we erred in reaching this conclusion. In any event, due to Cross-Sound's request for substitution, it is now clear that this proceeding is in fact opposed.

The course followed by this proceeding has been, to say the least, unusual. It was not, unfortunately, until the time of our October 17, 1975, order that we fully realized that environmental review of the involved proposal would be necessary. Accordingly, that order accepted various evidence tendered by applicant pertaining to matters of environmental import.

Applicant, as well as protestants and other interested parties, has now been given a full opportunity to present any matters bearing on environmental effects in the course of the environmental review process, which matters have been taken into account in preparation of the environmental impact statement contained in appendix A to this decision. As the proceeding is now clearly opposed, the matters contained in appendixes N and Q to applicant's petition for reconsideration in docket No. W-1270 (Sub-No. 2TA) will be given no consideration except insofar as such matters may be encompassed in the final environmental impact statement. Protestants have, as have other parties, been given a full opportunity to participate in the environmental review process and to rebut any statements made therein by applicant. Other tendered evidence of applicant accepted via our October 17, 1975, order will likewise be considered only insofar as such matters may be encompassed in the final environmental impact statement.

We accordingly deny the request of protestants for reconsideration of the October 17, 1975, order, except insofar as that order has been clarified and modified herein. We also deny the request in the alternative of petitioners to reopen the proceeding for further hearing. As aforesaid, protestants will not be deprived of any opportunity to rebut evidence tendered by applicant after the close of oral hearings. As to the evidence of "changed circumstances" concerning Cross-Sound's operations which protestants seek to introduce, such evidence might provide assistance in making an optimum decision. However, the length of time already consumed by this proceeding must be given consideration. There comes a time when litigation must end and a decision on the merits must be rendered. This problem was alluded to by the Supreme Court when it stated in *I.C.C.* v. *New Jersey,* 322 U.S. 503, 514 (1944):

> If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.

It is unfortunate that we were forced to reopen this proceeding once due to our own failure initially to institute environmental review. This does not, however, warrant a second reopening with further delay in the ultimate decision.

The evidence, the Administrative Law Judge's recommendations, the exceptions, the joint reply and the final environmental impact statement have been considered. We find the Administrative Law Judge's statement of facts to be correct in all materials respects and, as modified and supplemented herein, we adopt that statement as our own. The pertinent facts will be restated to the extent necessary for clarity of discussion.

FACTS

The unusual course followed in this proceeding creates difficulties in determining the precise evidence which should be utilized in finding the facts necessary to reach a decision. The evidence received at hearing by the various parties was presented under oath and subject to full cross-examination. Evidence received during the subsequent environmental review process is more up to date but is unverified.

We are of course obliged to utilize the environmental impact statement and the matters discovered therein in deciding environmental issues posed by this proceeding. However, in our consideration of other nonenvironmental issues, we believe that we may not take into account unverified evidence and shall accordingly only consider evidence presented through the time of the oral hearing. We will of course take note that Cross-Sound has acquired the relevant NLFL operations. This matter has been presented formally and is not subject to dispute.

Our presentation of facts in this section accordingly does not encompass evidence received during the environmental review process. Such evidence is encompassed in the environmental impact statement included as appendix A.

Applicant presently holds no authority from this Commission, but does own a vessel.[2] In addition applicant has entered into an agreement to purchase three additional vessels similar to the one it owns. In New London, applicant has made arrangements for a docking facility. In Greenport, applicant has purchased property and has made plans to improve it for docking purposes. Applicant proposes to provide service throughout the year, making at least one round trip daily betw[illegible] October 1 and April 30, two round trips daily from May 1 through July 31, and four round trips a day from August 1 through September 30. Applicant would provide a space reservation system for 50 percent of the vessel's capacity. It projects a substantial profit from its first year's operation based on (1) a study conducted by the Connecticut Department of Transportation,[3] and (2) the judgment of applicant's president who believes that there is an untapped source of passenger and vehicular traffic during the early part of the year in the movement of seed potatoes from points in Maine to eastern Long Island and other joint motor-water-motor freight traffic. Applicant proposes to man the *S.S. Greenport* with stockholders and directors and to provide a round trip in 4 hours with one-half hour unloading and loading at each end and 1 1/2 hours to move between the ports. Applicant has submitted evidence of its fitness, willingness, and ability to perform the proposed service.

Over 100 witnesses, as set forth in appendix B, testified in support of the application. They represent various backgrounds and occupations. The witnesses came from some New England States, but primarily from the eastern half of Long Island. They use ferry service when their travels are for business as well as for pleasure or family requirements. Their complaints about the existing service between New London and Orient Point, Long Island, N.Y., center around excessive waiting periods (of up to 6 hours), particularly during the summer months; inability of all waiting customers to board ferries with automobiles, and sometimes even as foot passengers; inadequacies of convenience facilities; excessive traffic congestion at New London and Orient Point; inability of truckers to use existing ferry service because the waiting time would cause hours of service regulations to be violated by drivers,[4] and the inconvenience of sleeping in trucks or automobiles at docks in order to be assured of a space on a vessel.

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[2] The vessel, originally the S.S. *New Jersey,* was purchased by applicant in March 1973 and renamed the S.S. *Greenport.* It was built in 1936, is steam powered, and has a carrying capacity of 100 automobiles (or 70 automobiles and 10 trucks) and 800 passengers.

[3] As pertinent here, the report of the Connecticut Department of Transportation, Bureau of Planning and Research, reached among others the following general conclusions: (1) that peak summer demand was not always satisfied during past years; and (2) that present summer service is definitely inadequate to meet demand.

In addition, seven witnesses testified concerning the proposed service, but appeared neither in support nor against the proposal.

Protestant Cross-Sound holds authority to transport (1) general commodities, automobiles with passengers, and tractors, trailers, and trucks, loaded and empty, between New London, Conn., on the one hand, and, on the other, Orient Point, N.Y. (located approximately 8 miles east of Greenport), and (2) passengers between New London and Orient Point. Its predecessor NLFL operated 3 ferries, each of which is capable of carrying approximately 20 cars, between Orient Point and New London.

NLFL submitted that in a 1972 traffic study it found that 80 percent of the passengers using its service were nonrecurring passengers. As a result of such traffic patterns, its operations have been cyclical with peaks during the summer months, a sharp decline in the fall, and a buildup in the spring. Such cycles result in losses in winter which then must be offset by profits during the rest of the year. This protestant included an abstract of the revenues and expenses for each month from January 1972 through November 1973 which demonstrated losses as great as $41,400 during the winter months and profits as high as $78,037 in summer. For the entire 23-month period covered it only had a profit of approximately $12,000.

Not only was NLFL's operation subject to seasonal cycles, but the daily use of its equipment during the peak summer season also varied. This protestant presented traffic summaries for each day from July 27 through August 19, 1973, which demonstrated that the ferries had empty spaces on some trips while at other times not all vehicles could be taken that sought passage. These cyclical features make it difficult, according to this protestant, to operate sufficient vessels to meet peak period needs, as the added expenses of such additional vessels would more than offset the additional revenues generated and could impair the viability of the entire service.

NLFL contended that because of the threat of the construction of a bridge, which basicallv would have made unnecessary the existing ferry service, it was reluctant to allocate the funds required to

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[4] Most of the trucker witnesses haul commodities which are exempt from economic regulation by this Commission under section 203(b) of the Interstate Commerce Act, or utilize private carriage in conjunction with their business enterprises. The latter is not subject to economic regulation. See sections 203(a)(17) and 203(c) of the act.

acquire newer and faster ferries. With the threat of such a bridge removed, protestant stated that it had begun plans to build as many as five vessels capable of carrying 40 to 50 vehicles and 300 to 400 passengers. It had received a commitment letter from the Federal Maritime Administration for Government-insured financing pursuant to provisions of Title XI of the Merchant Marine Act of 1936, and had arranged for the contruction of the first vessel.

NLFL stated that its vessels were regularly inspected and drydocked annually where they were repainted for the upcoming season. Passengers always were given the opportunity to get out of their vehicles before other vehicles were parked, although not all passengers desired to do so. All passengers on the Carribbean Ferry (one of NLFL's vessels) were prohibited from staying in their vehicles. This protestant canceled less than 1 percent of its scheduled crossings in 1973 through December 5. In addition protestant introduced evidence from certain user witnesses as set forth in the appendix.

BPJS holds authority to transport by self-propelled vessels (1) passengers (a) between Bridgeport, Conn., and Port Jefferson, N.Y., and (b) between Bridgeport, and Rye, N.Y., and (2) general commodities between Bridgeport and Port Jefferson.[5] It operates one vessel during its season from May 25 through October 14. It does not operate at capacity and fears diversion of some of its traffic to applicant. Only 32 percent of its trips had a full capacity of vehicles and it has never had a movement with a full passenger load. During 1972 it lost $44,000 on revenues of $434,000, and fears that any diversion would increase its losses.

SIGF intervened in opposition to the application on the grounds that the operation proposed by Mascony would seriously impair the safe operation of the present ferry service between Shelter Island and Greenport which the residents of Shelter Island depend upon for access to the mainland of Long Island.

The East End Supply Company, Inc., a retail merchant operating a store located adjacent to the property that Mascony proposes to use as its Greenport terminal intervened in opposition to the application. The basis for this opposition is that the proposed operation would cause serious traffic congestion in the downtown business district of Greenport.

The New York State Department of Transportation intervened in opposition to the application essentially on the grounds that the proposed Greenport terminal site of Mascony would result in acute traffic congestion in downtown Greenport.

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[5] BPJS thereby operates at the closest points approximately 62 miles west of the site of the proposed operation

The Village Planning Board of the Village of Greenport opposes the location of the proposed Mascony terminal at Greenport. Its position is that the location would be inconsistent with present and planned future use of the Greenport central business district and would so seriously aggravate an already badly congested traffic flow as to impair the basic character of Greenport and interfere with access by ambulances, police cars, and fire equipment to emergencies occurring within the area.

The Connecticut Department of Transportation sought only to make the Commission aware of the hazard posed by the access originally proposed over railroad grade crossings in New London.

DISCUSSION AND CONCLUSIONS

Applicant seeks to institute a ferry service between specified points in Connecticut and Long Island. Presently a competitive service is provided by protestant Cross-Sound, NLFL's successor-in-interest. In support of its proposed operation applicant has introduced testimony from approximately 100 users of NLFL's service. The testimony generally condemns such service because of (a) the long waits, usually between 1 and 2 hours, but on occasion as long as 6 hours, (b) the difficulty in getting out of or into the car or truck after it has been loaded aboard the ferry, and (c) the unsafe or unsanitary state of the vessel. It is on the basis of this testimony that applicant seeks approval of its application. It is our view that the operation of BPJS is not competitive with that proposed as BPJS operates between different, comparatively distant, points.

The evidence concerning delays in service, involving waits of up to 6 hours, conclusively shows the inability of NLFL to meet the needs of the public. Although these delays generally occurred during peak summer periods, a review of the evidence demonstrates that excessive waits also occurred at various other times throughout the operating season of NLFL. The proposed use of a reservation system by applicant should go a long way in alleviating these long waits. A person desiring to use applicant's service would be able to call ahead to reserve a place on the ferry and arrive in time to board. Another complaint of users of NLFL's service concerned the inability or difficulty of getting into and out of vehicles once they were loaded upon this protestant's vessels. The larger ferry to be [redacted] ed [redacted] ppli [redacted] wo [redacted] elin [redacted] e th [redacted] rob [redacted] Sin [redacted] y, t [redacted]

amenities of the larger vessel would lead to a more relaxing and enjoyable ride for the patrons.

The benefits of a new service might very well lead to additional passengers, (1) thereby reducing the number of people who drive around Long Island Sound rather than use the present ferry service, and (2) thereby increasing the number of tourists to this area to the direct benefit of the businesses located there. The need for additional service was pointed out in a study by the Connecticut Department of Transportation, Bureau of Planning and Research where, as noted above, it found an improvement in service might lead to more volume.

Throughout this proceeding NLFL and applicant seemed to consider this a proceeding to determine which operation would provide the ferry service to this portion of Long Island. We do not accept this argument. As noted above the number of passengers may very well increase significantly if the application is granted, thereby providing sufficient volume to maintain both operations. However, even if the new operations should disrupt the existing service, there is no right to engage in water transportation without competition, especially where, as here, the service provided has not been satisfactory. Furthermore, the successor to NLFL, Cross-Sound, is itself in effect providing a new service. Cross-Sound began its operation after the instant application was filed. Although Cross-Sound's service may prove superior to that of NLFL, the past history of difficulties with the existing ferry service warrants the authorization of a second new service in competition with Cross-Sound's new service.

Several witnesses complained because protestant NLFL ceased operating during the winter months. We believe the users of the ferry service should have available to them the use of a ferry throughout the year as proposed by applicant. This should prove particularly important during those months in which seed potatoes are being shipped. A grant of authority to a water carrier willing to operate throughout the year should be an economic boon to this area.

Throughout the public hearing portion of the proceeding, evidence was presented concerning the construction of a cross-sound bridge which would effectively eliminate the need for a ferry service. However, shortly before the hearings began the possibility of such a bridge was ruled out. NLFL stated that were it not for the threa [redacted] the [redacted] ridge, [redacted] ve [redacted] ruc [redacted] ew [redacted] els [redacted] plac [redacted] ex [redacted] fer [redacted] Aft [redacted] possibility of a bridge had been ruled out, NLFL pursued plans for the construction of vessels to replace the existing ferries but had not contracted for their construction because of the threat then posed by the instant application. NLFL stated that if the application were denied it would contract with the builder and start construction of the new vessels. We can understand a reluctance to invest sufficient money to construct new vessels better to serve the riding public because of the threat of the bridge. However, in view of the inadequacy of its service, we believe it was incumbent on this protestant to make some effort to improve its service beyond merely planning for the construction of new vessels once that threat was removed. Its failure to pursue promptly such improvements shows some lack of concern for the public and may very well have contributed to the filing of the instant application.

The Commission's environmental impact statement raises serious questions as to the effect the proposed operation would have on the environment. The purposed operation would add a substantial volume of traffic to the streets of downtown Greenport during times when traffic levels already exceed design level capacity and a potential safety hazard will be created as a result of the need for ferry-related traffic in New London to cross ConRail tracks to gain access to the landing site. In addition, the introduction of large ferry vessels into Greenport Harbor, which accommodates a large number of small craft in the summer months, could create some safety problems. Applicant has pursued several alternative plans to solve these problems as they arise. On the other hand, the fuel savings from the proposed operation (projected to be as much as 600,000 gallons annually) could be significant and in our opinion on the whole outweigh the possible environmental damages that could result from authorization of the proposed operation, considering the apparent willingness of applicant to take steps necessary to minimize adverse environmental impacts. Therefore, on the whole we conclude that the proposed operation would not have such a deleterious effect on the environment as to warrant denial of the application.

Several other matters remain to be considered. First, it should be noted that although we will grant the application, many problems remain before applicant will be in a position to begin operating. Applicant must determine where it will actually dock in Greenport, improve the landing point to allow its vessel to dock, secure and improve suitable staging areas, comply with various local, State, and Federal regulations, and secure appropriate permits. We are in no position to comment on the merits of such applications for permits and our decision should not be interpreted as Commission support or lack of support for such applications. Should such permits be withheld and applicant be unable to locate a different site in Greenport or New London that would enable it to secure the required permits, then the proposed operation would in all likelihood never begin. Furthermore, applicant has made certain proposals which would improve on the existing ferry service and has proposed modifications in its operating plan in order to alleviate adverse environmental effects. If we were to grant unconditionally the authority requested there would be no safeguard should applicant decide not to follow through with such improvements or not make modifications necessary to minimize environmental harm. For these reasons, we believe applicant should be granted at this time only a 3-year term certificate. This will give this Commission an opportunity to determine if applicant has in fact begun to operate, is operating in the manner it has proposed, and is in good faith taking measures necessary to alleviate adverse environmental impacts. Therefore, the certificate granted herein will expire at the end of the 3-year term, unless at least 6 months prior to its expiration date applicant files a petition for its permanent extension and demonstrates that it has been generally operating as it has proposed or under a more environmentally beneficial alternative, has endeavored to minimize adverse environmental impacts, and is in compliance with the Interstate Commerce Act and the applicable rules and regulations thereunder. The Commission is aware that not only Mascony but various other parties must cooperate in efforts along these lines, particularly insofar as environmental effects are concerned. If we find that a particular party has via unreasonable actions hindered good faith efforts by applicant to, in particular, operate in a manner which causes minimal environmental harm, we shall take such matters into account in determining whether to extend the certificate granted herein.

FINDINGS

We find that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by water, of general commodities and passengers by self-propelled vessels, between New London, Conn., and Greenport, Long Island, N.Y., that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; that a certificate authorizing such operation should be granted subject to the condition that it shall be limited, in point of time, to a period expiring 3 years from its date of issue; that this decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969; and that in all other respects the application should be denied.

Upon compliance by applicant with the requirements of sections 306 and 315(a) of the act and with the Commission's rules and regulations thereunder, within the time specified herein, an appropriate limited-term certificate will be issued. An appropriate order will be entered.

COMMISSIONER MURPHY, dissenting:

While I am in agreement with the majority's restatement of the general principles underlying a grant of an application, I am unable to join in today's decision because it is based upon a number of major procedural and substantive deficiencies. Although the list of these deviations is somewhat extensive, this separate expression will focus only on the following important areas: procedure; public need for the service; fitness; feasibility; environmental issues; and Federal-State (local) interaction.

Turning first to the procedural aspects of this proceeding, one of the serious deficiencies in today's decision is the failure to allow protestants and a successor-in-interest thereof (Cross-Sound) to introduce further evidence after applicant's request for further consideration was honored, the proceeding reopened to receive applicant's additional evidence and with official notice taken of matters in another proceeding. Although the majority now indicates some concern with its prior action, nevertheless, it offers no amends therefor, thus, admittedly, depriving protestants of due process of law. It is a fundamental principle of the law and this Commission's rules and regulations, that an opposing party be afforded an opportunity to show the contrary where a proponent has been allowed to present evidence. Cf., also in this connection, the Administrative Procedure Act, 5 U.S.C. 556(e) in those instances where official notice is taken of particular facts.

Again, the procedural handling of the evidence sought to be presented by protestant Bridgeport and Port Jefferson Steamboat Co. (BPJS) is somewhat unusual. As noted above, in addition to denying the request of BPJS to be allowed to rebut applicant's additional evidence, the majority appears to reject and discard the entire testimony proffered by protestant on the grounds principally that its operations are somewhat distant from applicant's proposed operations.[1] But such an approach fails to adequately consider several important factors: (1) protestant BPJS is a holder of an appropriate certificate authorizing service between points within a close proximity of applicant's proposed operations; (2) protestant BPJS provides service in the transportation of passengers and vehicles; and (3) in the absence of the services of protestant BPJS, passengers and others would be required either to travel through New York City to reach points on the eastern end of Long Island or they would create an additional demand with respect to the present service of Cross-Sound from New London. Accordingly, the majority's apparent dismissal of the evidence of protestant BPJS represents a drastic departure from the standards usually adhered to in an application proceeding, i.e., that the evidence of existing carriers is to be considered in determining whether an application should be granted.

Finally, on procedural grounds, the failure to afford Cross-Sound, the substituted protestant, an opportunity to submit evidence of changed circumstances is a matter of first importance. In denying the request of Cross-Sound, filed November 21, 1975,[2] the majority refers to the length of time already consumed in this proceeding and relies on the decision in *I.C.C.* v. *Jersey City*, 322 U.S. 503, for the principle that an end to litigation is essential in order that the administrative process may adequately function. However, reliance on that decision and principle is misplaced. This proceeding, far from being at a stage where further hearing might be inappropriate, was actually reopened for, among other purposes, the preparation of draft and final environmental impact statements. In fact, a draft environmental impact statement herein was served on February 3, 1976, with the final statement served on June 11, 1976. Thus, it is clear that the interval, November 21, 1975-June 11, 1976, a period of over 6 months, was adequate enough to permit Cross-Sound to submit evidence on its operations, with applicant and others allowed to reply. In these circumstances, there were no reasonable grounds to deny Cross-Sound's request and failure to honor that request while affording applicant the opportunity to update its own evidence is a serious departure from due process of law.[3]

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[1] In that respect, the tacit acknowledgment of the majority that on October 17, 1975, in its opinion the application was virtually unopposed gives added weight to the conclusion that the testimony of BPJS has been discarded.

[2] Cross-Sound by motion, filed October 29, 1975, sought to be formally substituted as a protestant. Apparently, no action was taken on the motion until today's decision.

Turning next to the substantive aspects of this proceeding, it must be clearly recognized that an applicant for operating authority has the burden of proving that the proposed service is or will be required by the present or future public convenience and necessity and that applicant is fit, willing, and able. See, section 309(c) [illegible] the act, 49 U.S.C. 909(c). With respect to a public need for the proposed service, applicant's entire testimony appears to be based principally upon the necessity for a substantial diversion of traffic from Cross-Sound. In fact, applicant's testimony might well be categorized essentially as predicated upon traffic statistics of Cross-Sound's predecessor and the testimony of some dissatisfied customers. However, on the balance, in light of the actual number of passengers handled by Cross-Sound's predecessor numbering well over 100,000, among other traffic handled by that carrier, the small number of dissatisfied customers is no indication of the need for additional service. This is not to say that dissatisfaction with existing services should be discounted. However, other factors of equal importance must be considered. One of the principal concerns of many of the participants herein was the possible construction of a cross-sound bridge which would have effectively eliminated the need for much of the present ferry service. In such an uncertain climate, it is clear that no prudent businessman would venture to make improvements or additions to his property or services until the bridge issue was settled. In addition, some complaints as to service appear to be related to extreme or peak demands for service on a sporadic basis. The Commission has frequently stated, for example, that the inability of existing carriers to furnish service instantly upon demand during a peak season does not establish that such carriers are either unwilling or unable to perform the required service. Cf. *Warthen Extension—Cranberries*, 117 M.C.C. 470. As noted above, the majority disregards the existing services of protestants in reaching a conclusion that there is a public need for the proposed service and categorizes the recently instituted service of Cross-Sound as a new service. Whether or not the latter service should be

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[3] Moreover, failure to act on the petition, filed November 21, 1975, until a disposition thereof in today's decision raises additional serious problems of due process. In a word, after a period of over 6 months, Cross-Sound is now advised that it, at one and the same time is substituted as protestant and its petition in all other respects is denied. If this is due process, then a new explanation of the term is necessary.

designated as a new service in light of a continuation of the services previously provided by New London Freight Lines (Cross-Sound's predecessor), nevertheless, the Commission has, in many instances, given due recognition of the existence of newly established services in denying an application in whole or in part. See, *West Brothers, Inc., Extension—Baton Rouge, La.*, 108 M.C.C. 485, 489, and *Truck Transport, Inc., Ext.—Jacksonville, Ark.*, 120 M.C.C. 449, 453-454.

An applicant for operating authority must establish its fitness. Fitness includes matters relating to safety of operations. While the regulation of safety is now principally lodged in the Department of Transportation, yet before a certificate may be issued this Commission must be satisfied that applicant is or will be in compliance with all safety regulations. See, *Ewen Brothers, Inc., Com. Car., Applic.*, 117 M.C.C. 101.[4] The record herein, especially that disclosed in the several environmental assessments, indicates clearly that no finding of fitness can be made because of the uncertainty as to how and where applicant will operate at New London or Greenport, among other matters.

Finally, it must be stressed that in light of the highly speculative and conditional nature of the proposed service at either end of the water movement, the feasibility of the proposed operations has not been adequately established.

Turning next to the environmental considerations, it is pertinent to note that the hearing officer recommended a denial of the application on environmental and safety grounds. A review of both the draft and final environmental impact statements reveals, contrary to the conclusion of the majority, that a grant of the authority sought herein is a major Federal action significantly affecting the quality of the human environment. Without question, the operations, if instituted at Greenport as proposed, may have an irrevocable impact upon the environment thereat. To this must be added the probable effects of increased motor vehicle operations in and around the port area. Additionally, the apparent hazards at New London adverted to by the hearing officer in his initial decision are, nonetheless, still present. And despite the modifications now suggested by applicant at New London, its proposal apparently would run counter to the long-term policy pertaining to the removal of railroad grade crossings on the heavily traveled ConRail and Amtrak routes between Boston, Mass., and New York, N.Y., among other points. See also, Public Law 94-210, section 703 with regard to the improvement of intercity rail passenger services. It is, thus, readily apparent that the environmental issues which are of major importance have not been adequately and fully resolved despite the extensive record made subsequent to the oral hearing herein.

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[4] Cf. also, the national transportation policy, 49 U.S.C. *preceding* § 901, regarding the need to

Turning finally to what is an important factor apparently overlooked by the majority, i.e., Federal-State (local) interactions, it should be noted at the outset that not only does the act limit this Commission's jurisdiction over purely intrastate matters, see, for example, section 303(j)(k), 49 U.S.C. 903(j)(k) but the Constitution of the United States, Amendment X, provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

The record clearly indicates the concern of the citizens of Greenport and others over the attempt by applicant to circumvent the wishes and long-term plans of the citizens of Greenport. Conceivably, such long-term plans may not be in accord with applicant's proposed commercial venture. Additionally, the progress and implementation of such civic planning may not be in agreement with applicant's plans. But the citizens of Greenport are entitled, within limits, to chart their own destinies without the intrusion of outside forces which may have little or no interest in the ultimate goals of those citizens. Cf. *Euclid* v. *Ambler Co.*, 272 U.S. 365, 389. In that respect, it is noteworthy that representatives of the citizens of Greenport, i.e., the Planning Board of the Village of Greenport, indicate that applicant has failed or refused to consult with that board as to its proposed operations in Greenport.

In summary, although the majority proposes to grant applicant a limited-term certificate, such action is not warranted on a number of important grounds. The procedural irregularities raise serious questions of denial of due process. Moreover, a grant of authority, even one for a limited term, presupposes that applicant has met its burden of proof both with respect to public need and fitness. But the record herein will not support a finding of a public need for the proposed service. Additionally, there can be no finding of fitness (safety) in the circumstances disclosed of record. The environmental issues though extensively considered herein remain largely unresolved. But in any event, a grant of the authority even with a limited-term certificate will clearly result in radical and major changes in the environment at several points. Finally, the desires of [illegible] citi[illegible], pr[illegible]ly [illegible] of [illegible]enp[illegible], to [illegible]t th[illegible] own destinies through a careful planning process would be largely circumvented in the name of expediency and a desire for commercial exploitation.

In these circumstances, I believe that the most prudent course of action would be to deny the application but without prejudice to the filing of a new application when and if applicant can meet its burden of proof, among other problem areas.

Accordingly, I respectfully dissent from today's decision.

APPENDIX A

FINAL ENVIRONMENTAL IMPACT STATEMENT

No. W-1270

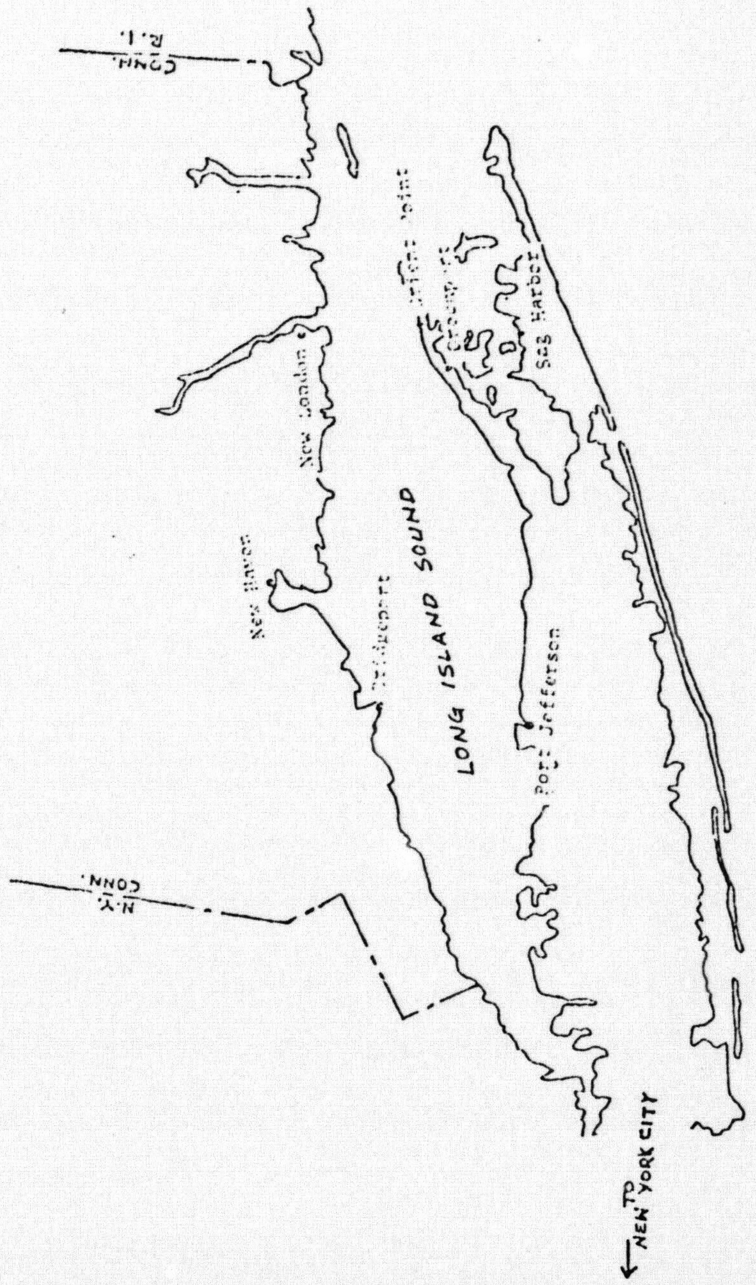
MASCONY TRANSPORT AND FERRY SERVICE, INC., INITIAL OPERATIONS—NEW LONDON TO GREENPORT, L.I., N.Y.

I. *Description of action*

Mascony Transport and Ferry Service, Inc., of New Bedford, Mass., seeks authority to commence operations as a common carrier by water between the ports of New London, Conn., and Greenport, N.Y. The purpose of the application is to provide ferry service across Long Island Sound for passengers, with or without automobiles and trucks carrying commercial traffic.

Applicant alleges that its proposed service will result in a substantial conservation of time and energy for potential ferry users inasmuch as its proposed all-water route of 21.5 miles is considerably less than the approximately 200-mile highway route between the involved points. Two existing ferries conduct operations across the Sound and oppose the application primarily on the ground that an additional service is not justified by the public convenience and necessity. Cross-Sound, Inc. (which recently obtained the operating rights of New London Freight Lines), transports passengers and vehicles between New London and Orient Point, N.Y., a site located 8 miles east of Greenport (see figure 1). The Bridgeport and Port Jefferson Steamboat Co. (B&PJ) operates approximately 69 miles west of the site of the proposed operation, serving the ports of Bridgeport, Conn., and Port Jefferson, N.Y. Mascony alleges that existing service is incapable of meeting current demand, particularly during peak traffic periods.

FIGURE 1



PROCEDURAL HISTORY

The application was filed on May 29, 1973, and hearings were held on the matter at New London on October 29, 30, and 31, and November 1, 1973; at Greenport on December 10, 11, 12, and 13, 1973, and January 8, 9, and 10, 1974; and at Washington, D.C., on February 20, 1974. The Administrative Law Judge, in an initial decision served June 19, 1974, concluded (1) that public demand for ferry service between New London and eastern Long Island exceeded the capacity of existing services for a good part of the year, (2) that although excess capacity during the late fall, winter, and early spring could well result in increased fares, inferior service, or both, the user public was willing to assume this risk, and (3) that the ability of applicant to provide the proposed service deserved further investigation in view of potential safety problems at New London and environmental difficulties at Greenport. The Administrative Law Judge accordingly recommended that the application be denied on the ground that the record was not sufficiently developed to permit adequate consideration of the environmental impact of the proposed action, particularly with respect to the Village of Greenport, and of the safety problems associated with the New London docking site. Mascony filed exceptions to the initial decision along with a petition to reopen the record for receipt of additional evidence.[1]

By order served October 22, 1975, the Commission, Division 1, reopened the record for receipt of tendered additional evidence[2] and reopened the proceeding for further consideration in light thereof. The order of October 22, 1975, also directed that an evaluation of the environmental effects of the proposed service be made in accordance with the National Environmental Policy Act of 1969 (NEPA) prior to any further decision on the merits of the proceeding. In response to this directive, the Environmental Staff prepared a draft environmental impact statement which was served upon the parties and appropriate Federal, State, and local governmental agencies on February 3, 1976. Comments were received from several interested parties and agencies and this final impact statement was prepared based upon these comments, further consultation with government officials and other interested persons, and an analysis of the record in this proceeding.

As was pointed out in the draft, this statement is not intended to be the decisional document in the instant proceeding. The discussion herein will be limited to describing applicant's operating proposal and analyzing its environmental impacts. Therefore, it is not the appropriate forum in which to resolve such issues as the existence of a public need for the proposed ferry operation and the effect of an additional service on existing water carriers. These and other questions pertinent to a determination of whether the proposed service is required by the present or future public convenience and necessity will be ultimately dealt with in the Commission's subsequent decision on the merits.

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[1] It should be noted that Mascony filed applications to conduct the proposed service under temporary authority both prior and subsequent to the initial decision in this proceeding. These applications, which incorporated certain changes in applicant's operating proposal, were denied by the Commission's Motor Carrier Board by orders dated May 29, 1974, and May 22, 1975, respectively.

[2] Specifically, said tendered evidence included a New York Permit to improve the Greenport ferry slip, an agreement whereby applicant would utilize the New London municipal pier as a docking facility, and an amended operations plan for the Greenport docking site.

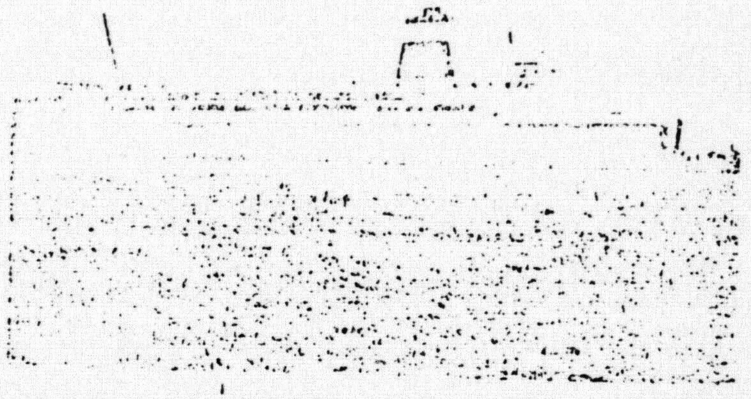
APPLICANT'S OPERATING PROPOSAL

Mascony has purchased four vessels from the Delaware River & Bay Authority (DRBA): the S.S. *New Jersey* (subsequently renamed the S.S. *Greenport*), the S.S. *Cape May*, the S.S. *Delaware*, and the M.V. *Cape Henlopen*. These vessels were used by the DRBA to provide ferry service across the Delaware River between Cape May and Lewes, Del., until dredging problems prompted the DRBA to seek vessels with shallower drafts.

Applicant proposes to utilize the *Cape Henlopen* and the *Greenport* for its proposed operations with the *Cape May* available as a backup vessel in the event one of its primary vessels is put out of service. The *Cape Henlopen* is a diesel-burning vessel approximately 320 feet long and 50 feet broad, with a draft of 3 feet forward and 10 feet at stern. Built in 1944, it was refurbished in 1955 and completely rebuilt in 1960. The *Cape Henlopen* has a passenger capacity of 600 and can carry a maximum of 80 standard-sized automobiles, or a mixed load of 60 automobiles and 5 tractor-trailers, on its six-lane automobile deck. It offers passengers such amenities as a snack bar, observation decks, rest room facilities, and passenger lounges. Holding-tank facilities will be installed to prevent the release of sewage into the Sound. Operating with a crew of 12, the *Cape Henlopen* will utilize 120 gallons of fuel per hour at a speed of 14 knots. The vessel has a displacement of 1,790 tons.

The *Greenport* (see figure 2) has an overall length of 350 feet, a breadth of 59 feet, and a 10' 6" draft. The vessel, which was constructed in 1936, lengthened and modernized in 1954, and refurbished in 1964, has a licensed passenger capacity of 800 persons. It can carry a maximum of 100 automobiles and a mixed load of 85 cars and tractor-trailers. The *Greenport* contains passenger amenities similar to the *Cape Henlopen's* and holding facilities will be installed before operations commence. A steampowered vessel, the *Greenport* burns approximately 360 gallons of fuel per hour at a speed of 15 knots and has a displacement of 2,758 tons. Capable of loading from either the bow or stern (as are all of Mascony's vessels), the ship will operate with a crew of 14. Mascony will spend a total of $100,000 on renovating the *Greenport*, the bulk of the improvements being cosmetic in nature.

FIGURE 2



Mascony's backup vessel, the *Cape May*, has the same vessel statistics, carrying capacity, and fuel consumption rate as the *Greenport*. Its displacement of 2,730 tons, however, is slightly less than its sister vessel. The *Cape May*, a steampowered vessel, was constructed in 1933, modernized in 1954, and refurbished in 1964. A new topside superstructure costing $1 million was added by the DRBA in 1970. Mascony does not plan to use its largest vessel, the S.S. *Delaware*, in service between New London and Greenport, and has offered said vessel for sale. The *Delaware* is 375 feet long and has the capacity to carry between 115 and 120 automobiles.

Mascony initially proposed to utilize docking facilities in New London located directly east of the Penn Central (ConRail) main line railroad tracks in the vicinity of the intersection of Bank and Sparyard Streets (see figure 3). As a result of objections expressed by the Connecticut Department of Transportation pertaining to the lack of safety devices over the track, and the probable creation of a public grade crossing across the Penn Central tracks in contravention of Connecticut and Federal law, applicant subsequently amended its operating proposal and leased space at New London's municipal pier, located at the foot of State Street approximately 1,500 feet north of its original site (see figure 3). However, Mascony intends to transact operations at the Bank and Sparyard Street location as soon as the operational difficulties regarding this site can be resolved to the satisfaction of the Connecticut DOT and Public Utilities Commission.[3] In view of this fact, this environmental study will include a discussion of both sites.[4]

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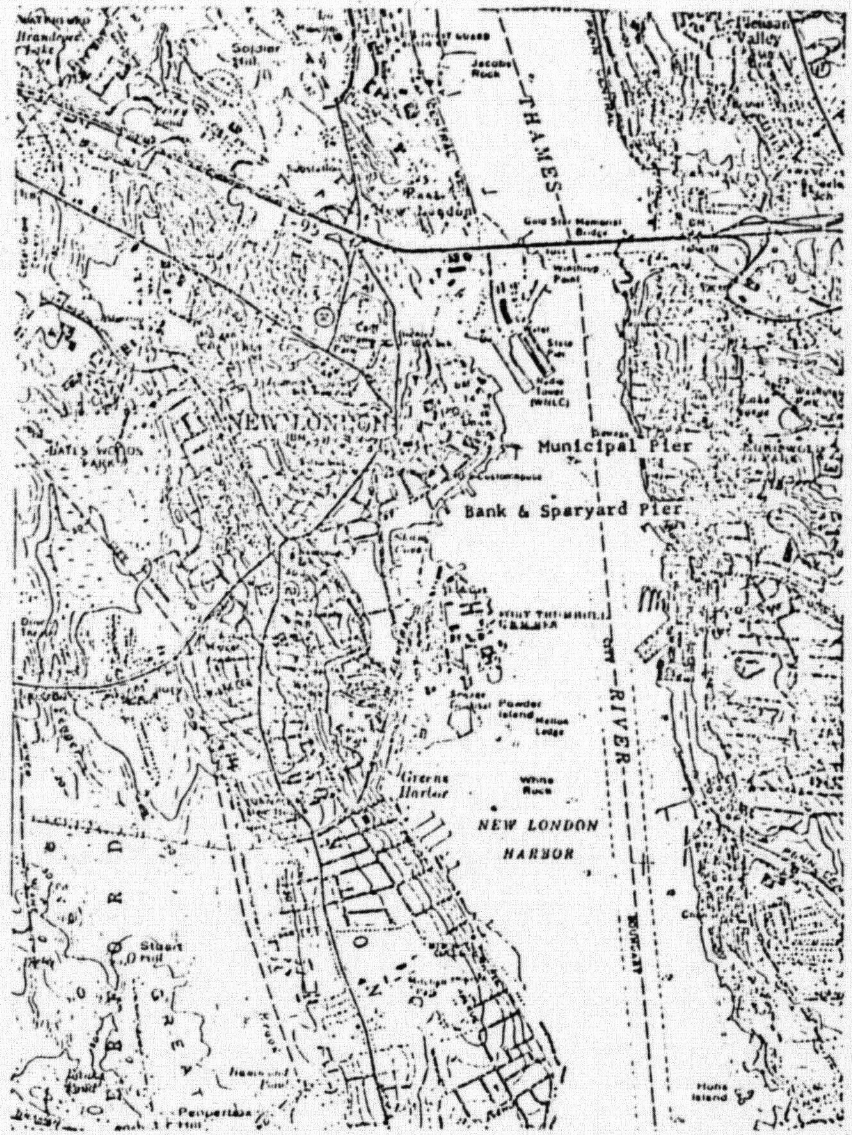
[3] Its lease on the municipal pier will expire on August 31, 1976, and does not include an option to renew. A New London City spokesman, however, has indicated that the city may extend the lease for a short period of time if use of Mascony's permanent location is imminent at the lease's expiration date.

[4] Under the Interstate Commerce Act, a water carrier can shift and otherwise change its docking facilities within the confines of a port without additional Commission authority. Consequently, there is a need to discuss alternative sites and operations.

FIGURE 3



The New London municipal pier is located directly east of the ConRail tracks, opposite the Amtrak passenger station. The pier, which extends 350 feet into New London Harbor and is 50 feet wide, was damaged by a tugboat collision several years ago and is unsafe for docking at its end. However, Mascony's vessels would dock adjacent to the pier at its basically sound north side. The only structure to be added to the pier would be a camel (a large log) tied to the north end of the dock. Mascony proposed to stage 60 passenger vehicles on the pier itself (40 feet of the pier's 50-foot width is available for such a purpose) and an additional 20 automobiles adjacent to the pier. Tractor-trailer units and excess automobiles would be staged adjacent to Mascony's Bank and Sparyard docking site and would be directed to the municipal pier via local streets just before boarding time. Mascony will construct a nonpermanent 45-foot ramp for loading and unloading of vehicles. Pedestrians will board by way of a walkway protected by pipe rail. Tickets will be sold upon boarding.

Ample facilities for overnight parking exist for those passengers desiring to leave their automobiles in New London. A municipal parking garage with space for 550 cars is located a short distance away from the municipal pier and additional parking facilities are available at the Bank and Sparyard site.

The bulk of the traffic embarking from New London is expected to enter the city by way of Interstate 95, approximately 1 mile north of the municipal pier, and will thus generally avoid entering the heart of the central business district. Access to the municipal pier will be by way of State Street across the ConRail tracks. State Street is a one-way thoroughfare with two traffic lanes and one parking lane. A fail-safe signaling device[5] is located at the railroad private grade crossing which also provides access to the adjacent Fishers Island ferry dock.

Mascony's original site near Bank and Sparyard Streets assertedly has the potential for parking and staging 213 vehicles. Mascony's option to purchase this 20,000-square foot parcel, which now accommodates a number of small buildings, expired in October 1974. Mascony met with the New London Redevelopment Agency (RDA) on April 7, 1976, regarding future acquisition of the property. As part of the Shaws Cove urban renewal plan, the RDA will purchase the property, improve it and then offer it for sale to potential commercial developers. If Mascony can demonstrate its fitness to finance and develop the property, RDA would consider selling the land to it for ferry purposes. It should be noted, however, that if other development proposals are filed they may be similarly entertained in determining the future use of the parcel. Utilization of the site as a ferry terminal would require demolition of certain buildings and hardtopping of the area. Mascony would also have to install a grade crossing across the ConRail tracks with a fail-safe signal to satisfy the Connecticut Department of Transportation and the State Public Utilities Commission. Mascony has applied to the State Public Utilities Commission for a permit to construct a grade crossing at the site but its application was denied without prejudice in view of the denial of the application in the instant proceeding and the failure of Mascony to obtain a permit from the State Department of Environmental Protection and the United States Army Corps of Engineers for the construction of dolphins in New London harbor and the installation of a new bulkhead.[6] If approval for a public grade crossing should ultimately be granted,[7] applicant will install a fail-safe crossing signal and station attendants along the tracks to direct traffic safely across. The rail right-of-way would be fenced off. Mascony plans to install dolphins adjacent to the stone jetty pier, install and maintain a sheet steel piling bulkhead to make the existing dock more uniform for use, and fill the area behind the new bulkhead with 1,915 yards of clean bank gravel.[8]

Mascony proposes to stage vehicles west of the railroad tracks and direct them across the tracks directly onto the ferry, which they will board by means of a nonpermanent 45-foot ramp. The major approach to the docking site would be by way of Bank Street, now a two-way thoroughfare with one parking lane and one traffic lane in each direction. Vehicles would make either a right or left turn from Bank directly onto the Mascony docking site. An alternate means of access to Mascony's property would entail making a left turn from Sparyard Street.

Applicant's mooring facility at Greenport extends approximately 350 feet into Greenport Harbor. The width of the proposed ferry slip ranges between 70 and 100 feet. Fourteen dolphins will be installed in the slip to accommodate vessels during docking and Mascony has been issued Tidal Wetlands and Stream Protection Permits and Water Quality Certification by the New York State Department of Environmental Conservation pertaining to said dolphin installation. However, it has not yet received approval from the U.S. Army Corps of Engineers for the project inasmuch as Corps action on Mascony's application has been suspended until a final decision on the instant operating authority application is issued. In view of the fact that the adjacent water level is a minimum of 11.5 feet deep at mean low tide,[9] dredging will not be necessary.

Mascony's proposed docking and terminal facility is located south of Front Street, between First and Third Streets. Applicant originally planned to dock 50 feet further west but potential interference with the Shelter Island Ferry which docks a short distance west prompted it to amend its operating proposal. Mascony owns two 11,000-square foot parcels at the corners of Front and Third Streets (see point A, figure 4), and Third and Wiggins Streets (point B), and a 20,000-foot parcel known as the Bohack Property (point C) abutting the Greenport Playhouse on Front Street. In addition, Mascony asserts it can renew its expired option to purchase a 20,000-foot parcel on Third Street north of Wiggins (point D) if additional space is needed for parking or staging. Applicant asserts that it has a valid lease on a large parcel extending from Front Street to its pier (point E) which it proposes to use for staging purposes. Mascony's legal interest in this property is challenged by Cross-Sound and the owners of the property, Harry and Pauline Mitchell. Mascony leased the property from Advine Realty Co. in February 1974, said lease to commence after approval of

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[5] Such a device, hooked up to the circuity of the track, obstructs access to the track whenever an approaching train comes within a specified distance of the grade crossing it protects.

[6] Mascony's initial application to the Department of Environmental Protection proposed placing dolphins at the tip of the pier. This proposal was denied without prejudice on the ground that the [illegible] ould [illegible] into [illegible] conda[illegible]nnel [illegible] loadi[illegible] unlo[illegible]nd th[illegible]rfere [illegible]

(footnote continued on next page)

(footnote 6 continued)

with the navigation of the secondary channel by commercial and pleasure craft. The Memorandum of Decision suggested that Mascony amend its plan, which it has done. However, applicant has yet to submit a new application in view of the uncertain status of the instant operating rights application.

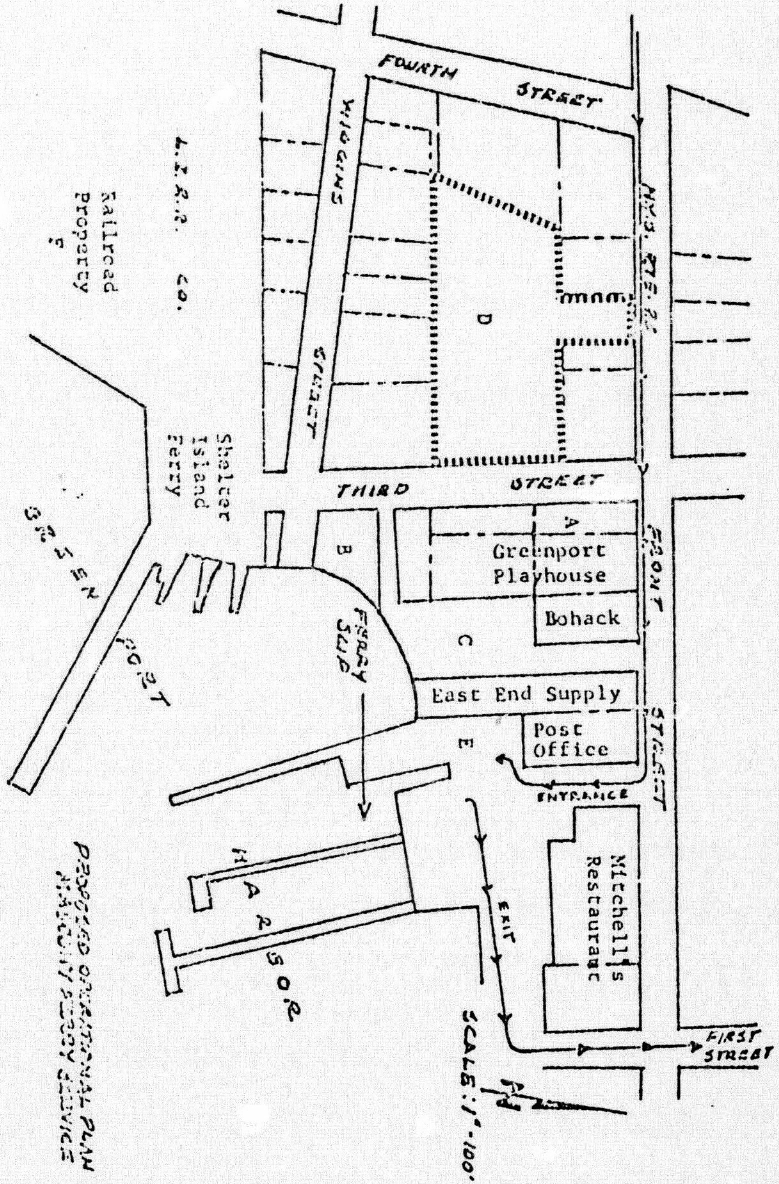
[7] Under 23 U.S.C. §322(a) (amended 1975), the Secretary of Transportation may allow certain private grade crossings to continue operating provided they are equipped with the best available protection. Pursuant to chapter 279 of the Connecticut General Statutes, the approval of the State Public Utilities Commission is required to change the use of and widen and install automatic protection at private grade crossings.

[8] Such improvements would be contingent on the approval of the State Department of Environ[illegible]tal C[illegible]ation[illegible]e A[illegible]rps [illegible]neers.[illegible]

[9] Report by Donal[illegible] Carson, Hearing Officer, State of New York Department of Environmental Conservation, in Tidal Wetlands Application No. TW-15277-0051.

its application in the instant proceeding. Advine Realty owned the property pursuant to a purchase money mortgage from the Mitchells who subordinated their mortgage to Mascony's lease. Advine defaulted on the mortgage and the Mitchells foreclosed in January 1976. The Mitchells challenge the validity of Mascony's lease and are considering taking legal action to assert their position. Mascony also asserts that it acquired an 18-foot right-of-way behind Mitchell's restaurant to be used for exiting from the ferry landing area. The Mitchells claim that this right-of-way was cut off by the foreclosure sale. Resolution of these legal issues are beyond the scope of the instant environmental analysis, and the issues are presented herein primarily in response to comments received on the draft impact statement. Nevertheless, as Mascony's proposal contemplates using the disputed property, the analysis will focus on the environmental impacts associated with this location. However, potential alternative sites in Greenport which could be used in the event Mascony is unable to utilize its proposed site are also discussed in a subsequent section of this impact statement.

FIGURE 4


FOURTH STREET
WIGGINS STREET
L.I.R.R. CO.
Railroad Property
F
D
N.Y.S. RTE 25
THIRD STREET
Shelter Island Ferry
GREENPORT
A
B
Greenport Playhouse
Bohack
C
FERRY SLIP
East End Supply
E
Post Office
ENTRANCE
FRONT STREET
HARBOR
EXIT
Mitchell's Restaurant
FIRST STREET
SCALE: 1"-100'
PROPOSED OPERATIONAL PLAN MASCONY FERRY SERVICE

In addition to installing dolphins, Mascony will remove a dogleg extending from the end of the pier. Although no other structural improvements to the ferry slip are planned, a potential erosion problem exists with respect to Mascony's staging area which may eventually necessitate construction of new bulkheads.

In view of the fact that most potential ferry users are likely to be oriented from areas west of Greenport, the major access to the ferry slip will be by way of New York State Route 25, an east-west cross-Island highway which becomes Front Street in the vicinity of the ferry landing site. To gain access to the ferry, eastbound traffic will make a right turn off Front Street onto a 55-foot alleyway between the Post Office and Mitchell's restaurant (an unused banquet hall will be partially demolished to create the access corridor). Vehicles would then move directly into the main staging area prior to boarding the ferry. Traffic staged on one of Mascony's other properties would have to move north on Third Street to Front Street and then along Front Street to gain access to the 55-foot alleyway into the docking area since a lack of right-of-way over property owned by the East End Supply Company prevents access along the waterfront. Ferry traffic disembarking in Greenport would be routed in two directions. Initially, applicant proposed to direct all traffic onto Front Street through the 55-foot alley but then amended its proposal to provide for the use of First Street as an exist route. However, allegations by Village representatives to the effect that First Street's 72-year old sewer pipes, which are laid only a few feet below the road surface, could not withstand the weight of the heavy tractor trailers which the proposed ferry service would generate induced Mascony to further amend its operational proposal. Applicant now proposes to direct all commercial traffic to Front Street with passenger vehicles being divided between Front and First. Vehicles exiting through First Street would not be permitted to turn onto Front, being directed across that thoroughfare by attendants stationed at the intersection of First and Front. Traffic routed through First Street would move north to County Road 27 which serves as a bypass to State Route 25.

Mascony asserts it will be able to stage 100 vehicles in the area adjacent to the ferry slip, 50 vehicles each on its Front and Third and Wiggins and Third properties, and 100 vehicles on the Bohack property. Overnight parking facilities would be available at Mascony's Third Street properties. Loading and unloading of vehicles would be accomplished by means of a 40-foot ramp extending from the bow of the ship. Passengers would board by means of a gangway extending from the side of the vessel.

Mascony proposes to operate all year round, the number of daily trips to depend upon the particular season of the year. It will utilize one vessel, the *Cape Henlopen*, the entire year, supplementing it with the *Greenport* during the 66-day summer peak period. The proposed schedule is listed below:

January 1st to April 29th

Leave New London	*Arrive Greenport*	*Leave Greenport*	*Arrive New London*
8 a.m.--------------------	9:30 a.m.	10:00 a.m.	11:30 a.m.
6 p.m.--------------------	7:30 p.m.	-------	--------

(The 8 a.m. departure would alternate between Greenport and New London every other day.)

April 30th to July 29th

Leave New London	*Arrive Greenport*	*Leave Greenport*	*Arrive New London*
8 a.m---------------------	9:30 a.m.	10:00 a.m.	11:30 a.m.
6 p.m --------------------	7:30 p.m.	8 p.m.	9:30 p.m.

July 30th to October 3d

Leave New London	*Arrive Greenport*	*Leave Greenport*	*Arrive New London*
6 a.m---------------------	7:30 a.m.	6 a.m.	7:30 a.m.
8:15 a.m-----------------	9:45 a.m.	8:15 a.m.	9:45 a.m.
4:00 p.m.----------------	5:30 p.m.	11:15 a.m.	12:45 p.m.
7:15 p.m.----------------	8:45 p.m.	7:15 p.m.	8:45 p.m.

October 4th to December 31st

Same schedule as January 1st to April 29th.

It should be noted that Mascony may expand its schedule to four round trips daily during June or July if demand warrants.

Applicant projects that it will be operating at 30 percent of capacity from January 1 to April 29, 40 percent of capacity from Arpil 30 to July 29, 60 percent of capacity during the July 30 to October 3 peak season, and 35 percent of capacity the rest of the year. Mascony estimates that it will book 66,385 vehicle spaces (95 percent passenger and 5 percent commercial vehicles) and carry 300,000 passengers annually. Applicant arrived at this figure by averaging New London Freight Lines ridership during the first and last 3 weeks of operation in 1972 and taking into consideration the high number of turnaways observed during peak season.[10] Based on a survey of riders in the Connecticut DOT preliminary report, it is anticipated that the ferry will be used primarily for social or recreational purposes and on an irregular basis. Mascony's projected traffic mix of 95 percent passenger and 5 percent commercial vehicles is also based on the past experience of its putative competitor. However, Mascony anticipates a large volume of seed potato traffic (approximately 800 tractor-trailer units) moving between Long Island and Maine during February and March, a time during which passenger use will be at its lowest.

In contrast to Mascony's proposal, Cross-Sound's existing service is characterized by smaller vessels making more frequent sailings. Cross-Sound operates five vessels, the M.V.'s *Orient, Plum Island, Manisee, Manitou*, and *Caribbean Ferry*, with vehicle-carrying capacities ranging between 12 and 24. Between one and three vessels are in service simultaneously, depending upon the time of year. Cross-Sound's 1976 schedule is divided into three segments. During its spring and fall schedules (April 30 through June 10 and September 20 through October 31), Cross-Sound sails seven times daily from both New London and Orient Point. Its summer schedule (June 11 through September 19) lists 11 departures from each port, with one additional trip on Fridays and Sundays from July 2 through September 12. Cross-Sound's winter schedule (January 1 through March 11 and November 29 through March 1977) is characterized by three departures from each port on weekdays and four daily departures on weekends. Protestant also schedules four sailing a day from March 12 through April 29, seven daily trips on Easter, Christmas, and New Year's weekends and five daily trips on Memorial, Columbus, and Thanksgiving weekends. Cross-Sound's predecessor, New London Freight Lines, had not previously transported truck traffic during the winter months but Cross-Sound began doing so when it began operations in March 1975. Ferry service for trucks, however, is primarily dependent on the availability of the two larger vessels, the *Orient* and *Plum Island*, although the *Caribbean Ferry* can carry a limited number of commercial vehicles.

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[10] The Connecticut Department of Transportation, Bureau of Planning and Research recorded 150 vehicles turned away on August 16 and 124 turned away on August 18, 1972, in a preliminary repo[illegible]yzing [illegible]ient [illegible]erry.

B&PJ transp[illegible]sengers and vehicles on the M.V. *Martha's Vineyard*, a 202-foot-long vessel with a [illegible]-foot beam. The *Martha's Vineyard* has a 33-vehicle and 1,061-passenger capacity and runs from May 25 to October 14, making between three and five round trips daily depending upon the season and day of the week.

From March 22, 19[illegible], the date Cross-Sound commenced operating the Orient Point Ferry, to November 30, 1975, it has carried 62,549 vehicles and 120,174 passengers between Orient Point and New London. Based on volume capacity supplied by protestant, this traffic is equivalent to an average of 15 percent of passenger and 70 percent of vehicle capacities for scheduled runs (see table 1). Unlike its predecessor, Cross-Sound accepts reservations.

TABLE I

Cross-Sound Ferry Service, Inc., 1975 capacity and traffic statistics

Month		Capacity	Traffic handled
March[1]	Passengers	14,920	2,038
Do	Vehicles	[2]1,580	[2]907
April	Passengers	44,760	4,705
Do	Vehicles	4,740	2,541
May	Passengers	57,892	9,542
Do	Vehicles	9,758	5,576
June	Passengers	117,600	15,254
Do	Vehicles	13,056	8,303
July	Passengers	163,680	27,482
Do	Vehicles	15,872	12,640
August	Passengers	163,680	32,686
Do	Vehicles	15,872	14,553
September	Passengers	127,800	12,718
Do	Vehicles	13,632	9,047
October	Passengers	58,280	9,794
Do	Vehicles	9,920	5,974
November	Passengers	45,536	5,955
Do	Vehicles	5,064	3,088

[1] Operations commenced March 22, 1975, under temporary authority pending approval of transfer of operating authority from previous owners to Cross-Sound Ferry Service, Inc.

[2] Vehicle capacity is measured in terms of conventional passenger vehicles. In calculating traffic handled conventional passenger vehicles are each counted as one vehicle and trucks are counted as three vehicles each since a 55-foot tractor-trailer combination occupies three passenger vehicle spaces. Since many of the trucks handled were actually less than full size tractor trailers the figures shown for vehicle traffic handled are somewhat overstated.

Source: Cross-Sound Ferry Service, Inc.

II. Relationship to land use plans, policies, and controls

A. *Greenport.*—The Village of Greenport is part of the town of Southold which comprises the major portion of the north fork of eastern Long Island, bounded by Long Island Sound on the north and Peconic and Gardiner's Bays on the south. The area is predominantly agricultural, the primary crop being potatoes, with generally uniform topography of gentle to moderate slope. In addition to its extensive farmland, the most important physical feature of the township is its many miles of waterfront. Greenport is located on the south shore of Southold and has one of the three deepwater ports on Long Island outside of New York City. The dredged channel has a depth of 40 feet. Because of its harbor, Greenport has become a prominent fishing village (the major catch being shellfish) and the site of fish-packing and canning industries as well as a popular port of call for pleasure craft. The predominant form of land use in the Village is the single-family residence which accounts for over 25 percent of the Village's developed land. While some two-family and multiunit buildings do exist in the village, the majority of residences are large, old structures on relatively large plots of land. Commercial activity is concentrated along Front Street between Third and Main Streets and Main Street between Front and the waterfront. Most commercial activity is devoted to retail and marine-related businesses with less than 2 percent of the village being subjected to industrial and heavy commercial use. Most of this commercially devoted acreage is concentrated along the waterfront and the Long Island Railroad tracks. According to the Village Comprehensive Development Plan, only 4 percent of the Village's gross land area (approximately 20 acres) is available for development.[11]

Although the population of Suffolk County has skyrocketed during the past 20 years, and that of Southold has increased moderately, the population of Greenport has declined by 18 percent, from 3,082 in 1950 to 2,481 in 1970. There are proportionately more persons in the 45 years or older age group residing in the Village than in the county as a whole, the average age of Village residents being approximately 38 years.[12] The indications are, therefore, that in addition to its resort town character Greenport is viewed by some as a desirable retirement community.

Suffolk County has been designated a depressed area eligible for full financial assistance by the United States Department of Commerce, Economic Development Administration. In addition, the Village of Greenport has been labeled a depressed area by the county because of its higher unemployment rates, lack of new municipal facilities, and lower family income.[13] Village planners assert, however, that conditions have improved in recent years as increased tourism has invigorated the Village's economy. The Village Comprehensive Development Plan seeks to take advantage of Greenport's natural features and build upon its success as a summer resort. The plan recommends promotion of maximum use of the Village's waterfront facilities and development of a diversity of water-oriented activities. A pedestrian mall which would be closed to vehicular traffic is recommended for Adams Street, a block north of Front Street. The plan recognizes the adverse effect of on-street parking on Front Street upon efficient vehicular flows and proposes adding approximately 300 public off-street parking spaces, as well as widening key thoroughfares. The plan proposes to enhance the waterfront area by constructing landscaped pedestrian walkways leading onto the waterfront and filling in boat slips for recreational use. Implementation of the specific recommendations made in the plan, however, is speculative. The Village is considering plans for a marine museum, to be known as the Greenport Aquaseum, to be constructed and operated by the Middle Atlantic Natural Science Council, Inc. Although Mascony has offered the Council its building on the Bohack property on Front Street for museum purposes on the condition its operating rights application is approved, the Village Board is expected to make available a 5-acre parcel on Moores Lane, approximately 1/4 mile northwest of the business district. Use of this site, which has been approved by the Aquaseum's Board of Directors, would contemplate parking facilities at the museum and a shuttle bus service between the site and downtown Greenport. The museum will be built in modular fashion with expansions planned in the event additional funding becomes available. It is initially expected to attract a minimum of 50,000 visitors annually, primarily from Nassau, Suffolk, and Queens Counties, N.Y. The museum could, however, also attract tourists from southeastern New England. Current tourist attractions in the Village include an Oyster Festival 1-day each year in October and a 1-day art show during the summer season. An in-the-water boat show which would run for 2 weeks is in the planning stages.

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[11] Data for this paragraph was obtained from the Comprehensive Development Plan, Town of Southold, Village of Greenport, part I.

[12] Source: 1970 census data.

[13] 1970 median family income for Greenport was $8,664, compared to $9,949 for the Town of Southold and $12,084 for Suffolk County. Source: 1970 census and Suffolk County Planning

Existing land use for the area directly adjacent to the ferry is zoned waterfront commercial. The Shelter Island ferry, which transports passengers between Greenport and Shelter Island in 85-foot-long and 30-foot-wide vessels, docks approximately 300 feet to the west. The area adjacent to the proposed Mascony site on the east is devoted to marina use and houses small fishing and pleasure craft (see figure 4).

Although the proposed ferry service would bring a large number of tourists into town from the New England area, members of the Greenport Planning Board assert that the ferry would be inconsistent with the Comprehensive Development Plan and would seriously alter the character of the Village. They allege that traffic generated by the ferry will clog village streets to such an extent that residents of nearby villages and regular summer tourists will avoid coming into Greenport. It is further alleged that unlike the regular tourist trade, ferry travelers will perceive Greenport solely as a connection between New York and New England and, consequently, will not patronize Village buisness establishments. Mascony's utilization of its present site, while consistent with the area's present zoning classification of waterfront commercial, would be inconsistent with Greenport's plan to develop its waterfront area for recreational uses or as a location for off-street parking for village shops. It is contended, therefore, that the ferry will hinder rather than promote the Village's development as a resort town.

Members of the Village Planning Board indicate that alternative docking sites would be less disruptive to the Village's development plans to the extent they avoid placing ferry traffic in the heart of the Village commercial district. The only alternative site to be given serious consideration thus far is an area south of the Long Island Railroad pier located approximately 500 feet west of Mascony's present location (see figure 4, point F).

Greenport is the easternmost terminus of the Long Island Railroad on the north fork of Long Island. During the 19th and early 20th centuries, the railroad operated a car ferry service transporting both passengers and rail freight from this pier to New England. The service was abandoned in 1930 and the pier has remained unutilized since that time. The railroad owns approximately 100,000 square feet of property, including a passenger depot and the land underlying the tracks. Current railroad service to Greenport is infrequent with only two passenger trains entering and leaving the station each day. Use of the approximately 61,000 square foot area south of the pier would not only eliminate potential navigational problems associated with Mascony's currently proposed site but would also alleviate much of the traffic problem which would arise from diverting ferry traffic directly into the center of town. Staging for the ferry could take place on the unused railroad property itself or on the nearby Mascony properties. The parcel now is encumbered by unused trackage and a turntable, both of which the railroad intends to remove regardless of the future disposition of the land. While there would be some disruption to residential uses adjacent to the traffic approach to the railroad site, the impact on the town in general would be substantially less severe. The railroad has no objection to leasing its property for ferry purposes providing that its right to future use of the property can be preserved. Although the Village has the right to utilize the south side of the railroad pier for docking of fishing or pleasure boats, it does not now contemplate such use and would prefer to convert the pier to a fishing wharf or pedestrian dock. It is not optimistic, however, about obtaining funding for such a project. Access to the Long Island Railroad property could be provided by way of Fourth Street which crosses Front Street west of Third. Fourth Street is a two-way road with approximatley 50 feet of cross section. A grade crossing would have to be constructed over the railroad tracks to reach the property. Use of this site, however, would require installation of a steel sheeting bulkhead, dredging (the depth of the water being only 3 feet), and filling in a washed out portion of the pier. Docking would consist of a drag line operation from the beach. The above-mentioned alterations would require a permit from the U.S. Army Corps of Engineers and the State Department of Environmental Protection.

Other potential alternative docking sites exist in the extreme eastern part of the Village, north of the commercial district. These sites, also zoned waterfront commercial, are located adjacent to residential areas. Utilization of these sites would result in less congestion than in the downtown area but would entail potentially more interference with residential use. It is not known whether sufficient land would be available in these areas for staging and parking purposes.

B. *New London.*—New London, a city of 31,360 persons, is situated in southern New England, roughly midway between New York City and Boston. The city is located on the west bank of the Thames River at the entrance to Long Island Sound, which bounds the city on the south. New London is a shipbuilding and manufacturing center whose major products include pharmaceuticals, printing presses, engines, paper products, and furniture. Its economy is based primarily on defense industries and services employment. Because of its harbor, one of the deepest on the Atlantic coast, New London developed as a whaling and sealing port in the 19th century. The city's extensive waterfront (totaling 5.5 miles) is still considered to be its most valuable natural asset and houses three other ferry services besides the one proposed by Mascony—the Orient Point, Fisher's Island, and Block Island ferries. The U.S. Navy Submarine Base maintains 17 piers and the harbor is used extensively by Navy and Coast Guard vessels. New London is the site of the U.S. Coast Guard Academy as well as several national historic sites. New London experienced a decline in population between 1960 and 1970, due largely to outmigration to the suburbs. Current land use is primarily high-density residential with some high-density mixed urban concentrations and intensive institutional uses.

The municipal pier at the foot of State Street is part of a planned multimodal transportation terminal to accommodate interchange between automobile, rail, bus, ferry service, and taxi linked to air commuter service at the City's Trumbull Airport. The city has developed a 550-car municipal parking garage to support such development and has proposed several improvement projects designed to facilitate coordination between the various transport modes. It has applied to the State Department of Transportation for financial assistance in implementing these plans. Proposed projects include the development of a bus terminal adjacent to the municipal garage, construction of a pedestrian bridge to connect the garage to the train platform and, eventually, to the various ferry landings, and in the long term, development of physical links to the ferry services, removal of Penn Central spur tracks, and overall development of the waterfront. Thus, location of the proposed ferry service at the municipal pier on an interim basis would be consistent with city plans in the area.

Mascony's primary site at Bank and Sparyard Streets is located within the Shaw's Cove area, a district scheduled for urban renewal. Plans call for rehabilitation or demolition of buildings and widening of streets in the area surrounding Mascony's property. Bank Street, the major artery carrying traffic to and from the proposed service, would be widened and converted to a one-way thoroughfare northbound. Eugene O'Neill Drive, a major connector between Interstate 95 and the waterfront, will be extended to connect with Tilley Street at a point one block west of Bank Street in the vicinity of the proposed terminal and will be converted into a one-way throughfare southbound. Blighted waterfront property will be reclaimed in an effort to reestablish the area for pedestrian and marina use. At the present time much of the area around the waterfront has been left to deteriorate and is unsuitable for recreational purposes. Rehabilitation has already begun and institution of the proposed service in the Shaw's Cove area is expected to assist in the area's rejuvenation.

In order for the city to obtain funding for this urban renewal project from the U.S. Department of Housing and Urban Development, it must make some provision for protecting Shaw's Cove against hurricane-induced floods. Consequently, the City Redevelopment Agency is working with the U.S. Army Corp of Engineers in planning construction of a hurricane barrier along the Shaw's Cove waterfront. The plans for this project have undergone several revisions and are still conceivably subject to change. The current plan, as described in a Corps of Engineers' final environmental impact statement issued in April 1976, contemplates construction of approximately 2,800 feet of earth berm from 12 to 14.5 feet above mean sea level to be connected by approximately 300 feet of "L" wall with a top elevation of 14.5 feet. The proposed project is expected to provide flood protection for approximately 45 acres in the Shaw's Cove area.

The present plan would affect access to Mascony's Bank and Sparyard docking site since it calls for construction of the "L" wall between the ConRail tracks and Bank Street, thus cutting off Mascony's staging area from the pier. The only access to the waterfront would be by way of a ramp which would allow vehicles to drive over the berm and "L" wall at Sparyard Street. The ramp would connect to a service road approximately 24 feet wide with one traffic lane in each direction. This road would serve properties located between the railroad tracks and the harbor. The New London RDA indicates, however, that actual construction of the hurricane protection project may be approximately 2 years away and that plans could be revised to accommodate landowners along the waterfront.

The proposed use of the Bank and Sparyard property by Mascony is not consistent with the Federal Railroad Administration's general policy to eliminate private grade crossings along the northeast rail passenger corridor between Washington, D.C., and Boston. This policy is designed to carry out the goals set forth in Title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210). This part of the act directs the Secretary of Transportation to improve high-speed rail services in the Northeast corridor in terms of speed and reliability of service as well as safety. A study performed for the FRA by the Bechtel Corporation recommended that all but three of the private grade crossings in New London be abolished to help meet this goal. Abolition of the private grade crossing across Mascony's proposed Bank and Sparyard site would require permission from the State Public Utilities Commission which would hear the matter pursuant to a petition filed by FRA. Inasmuch as the FRA would propose to purchase the crossing from the appropriate landowner prior to dissolving it, implementation of its plan depends on whether budgetary funds can be made available.

Finally, the New England River Basins Commission has issued a study entitled "People and the Sound: A Plan for Long Island Sound." The report, a cooperative effort prepared by a team of Federal, State, and Regional agencies, local citizens, and the scientific community recommends that a long-range management program be developed to protect critical environmental areas along the shore and assure opportunities for greater public access to use of the Sound. More specifically, it adopts the policy that public transit to and from shorefront facilities should be encouraged to minimize the current near-exclusive reliance on automobiles. The report recommends a State-subsidized mid-Sound crossing between New Haven and Shoreham. In addition, the report recommends development of small passenger ferries or launches to enhance recreational access to beaches. To the extent that the plan indicates a need for an additional ferry service, Mascony's proposal would be compatible. However, if a New Haven-Shoreham service was to be instituted (this is admittedly speculative), the operations of Mascony from New London and Greenport could adversely affect the viability of such a service.

The report also recommends that steps be taken to protect certain scenic townscapes, including Greenport, and that a public marina be developed in Greenport Harbor. Institution of ferry operations may be inconsistent with these general plans, should they ever be implemented.

III. *Environmental impacts*

A. *Traffic congestion.*—The proposed service will result in increased vehicular traffic in both of the involved localities, creating possible traffic flow problems. Applicant's Bank and Sparyard site in New London is in the midst of the Shaw's Cove urban renewal area where the local highway system is being improved. As a result of redevelopment, an alternate one-way north-south street system with 36 feet of cross section in each direction will be available between the proposed ferry landing and Interstate 95. This arrangement will increase highway capacity to such a level that the traffic likely to be generated by Mascony would be insignificant in comparison to such increased capacity. The initial configuration of Bank Street and O'Neill Drive, the most likely access and egress routes to the ferry site, is contemplated to be two 12-foot travel lanes and one 12-foot parking lane. Estimated urban intersection approach service volumes for one-way streets with parking on one side approximate 2,400 vehicles per hour green for this highway configuration.[14] When the growth of traffic warrants, the street configuration will be changed to three 12-foot travel lanes. Table

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[14] "Highway Capacity Manual," HRB 87, Highway Research Board (1965), figure 6.6. "Vehicles per hour green" indicates the number of vehicles which move through an intersection for each hour the traffic signal is green in a given direction. Thus, if the signal is green half of the time in each direction, the number of vehicles crossing the intersection in each direction would be measured over a 2-hour period.

6.5 of the Highway Capacity Manual estimates approach service volumes for such a configuration to be 3,200 vehicles per hour green. Both of the volumes mentioned assume Level of Service D (traffic approaching unstable flow), and additionally assume 10-percent left turns, 10-percent right turns and 5-percent trucks and through buses. Since the streets under consideration are the major arterials in the area, it can be assumed that they would have priority in the signalization pattern. With 75-percent green time for these two major highways, the resultant approximate capacities would be 1,800 vehicles per hour in the two through lanes. It should be pointed out that these values are for comparison purposes only to approximate the volume of the proposed street configurations.

The final design of the street system, particularly within the area of the proposed ferry operation, is incomplete. Such undecided design elements as the final transition curve from Bank Street to the station with related questions of property acquisition and the possibility of a pedestrian bridge over the highway to the municipal parking lot, could result in variations in street widths and the final highway capacity in this area. The final decision on the matters is expected in the summer of 1976. The capacities discussed above, however, should be accurate estimations of the actual capacities which can be accommodated on these streets. Inasmuch as the capacity of the *Greenport* is 100 automobiles and that of the *Cape Henlopen* 80, a capacity ferry load discharged into the traffic stream would comprise approximately 4 percent of the three through lane highway capacity. Current traffic figures for the involved area indicate that existing volumes do not approach capacity. Peak hour volumes for northbound traffic on Bank Street at its intersection with Tilley range between 329 (a.m.) and 521 (p.m.) vehicles per hour while southbound volumes range between 514 (a.m.) and 525 (p.m.) vehicles.[15] Additional peak hour volumes in the area are:

	a.m.	*p.m.*
Bank Street (left turn on Tilley)	69	60
Bank Street (right turn on Tilley)	19	36
Tilley Street (left turn on Bank)	23	55
Tilley Street (right turn on Bank)	57	111

However, in view of the significant changes to traffic circulation patterns and the adjoining land use which will result from urban renewal, such figures are not reliable indicators of postrenewal traffic levels. Bank Street will become a one-way thoroughfare northbound, precluding its use as an access route for southbound travelers coming off of Interstate 95. Access to the ferry from I-95 will be by way of O'Neill Drive southbound into Tilley Street eastbound and across Bank Street to the landing site.

A greater potential for traffic congestion exists at the municipal pier site. The Orient Point ferry, now located a half-mile south of Mascony's Bank and Sparyard landing site, plans to relocate a short distance north of the municipal pier, adjacent to the Block Island Ferry landing site. The Fishers Island ferry now docks at the other side of the municipal pier. This concentration of ferry services in an area which will also contain a bus and railroad terminal may result in traffic tieups during the summer peak. Traffic may also back up on State Street if vehicles seeking to enter the staging area are blocked by train arrivals and departures. However, major traffic congestion is not anticipated and delays associated with off-loading traffic during this time are not expected to be intolerable. Current peak hour traffic volumes for State Street in the vicinity of the railroad tracks range between 414 (a.m.) and 534 (p.m.) vehicles per hour, below the road's capacity. It should also be noted that potential traffic problems pertaining to the municipal pier location will be temporary in nature because of the interim status of the site.

Conditions in Greenport, on the other hand, present potentially serious traffic problems in the event Mascony operates from its proposed site between First and Third Streets. While there is a lack of specific data necessary to perform a detailed analysis of the traffic impact of the proposed service upon Greenport, certain qualitative evaluations can be made and are the subject of the following discussion.

In view of the fact that access to the ferry slip from Third Street is blocked by the lack of an easement across the property of the East End Supply Company, Front Street eastbound traffic must use the 55-foot alley between the Post Office and Mitchell's Restaurant to reach the primary ferry staging area. This alleyway is of sufficient width to accommodate the turning radii of the vehicles using it. While there may be sufficient storage space in the primary staging area for most sailings, passengers wishing to leave their cars behind would most likely park at one of Mascony's Third Street parcels.

Much of the traffic landing in Greenport will exit by way of First Street proceeding north. Such traffic would then probably continue along First Street until its end at Main Street and then take Main Street to reach County Route 27, an east-west oriented road north of the village. All commercial and the remaining automobile traffic will be routed out through the 55-foot alleyway, with the bulk of these vehicles making left turns onto Front Street westbound.

Front Street in the vicinity of the proposed ferry landing site carries two-way traffic with two parking lanes in 33 feet of cross section. While no definitive breakdown of this cross section was available, photographs indicate each of the two travel lanes to be approximately 9.5 feet wide and the parking lanes 7 feet wide. First and Third Streets are both approximately 50 feet wide and accommodate two-way traffic with two travel and two parking lanes.

Calculation of the actual volume capacity on Front Street is difficult since narrow lanes, two-way traffic, parking, and frequent turns are all physical or operational factors which detract from optimum capacity.[16] However, NYS Route 25, from NYS Route 114 to Main Street, has been assigned a design hour level of 330 vehicles by the Traffic Section of the New York State Department of Transportation, Region 10 Planning and Development Division.[17] Although more vehicles can be accommodated at lower levels of service, such levels result in lower operating speeds, traffic stoppages, and other congestion-related problems, including accidents. A traffic study for the Village of Greenport performed by the Suffolk County Traffic Safety Department in October 1974 shows traffic volumes on Front Street during August reaching levels of between 380 and 400 vehicles per hour. The Study describes traffic conditions at this time as congested and such levels may reflect an approximation of the ultimate capacity of Front Street. These high levels of traffic contribute to the occurrence of the majority of traffic accidents in the village on Front Street at the intersections with Main, First, Third, and Fifth Streets,"[18] in the area of Mascony's proposed ferry landing.

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[15] Source: New London Redevelopment Agency.

[16] See Highway Capacity Manual, *supra*.

[17] This corresponds to estimates of the capacity of Front Street "with a decent level of service" [illegible] by [illegible]folk [illegible] Traf[illegible]ty D[illegible]ent.

[18] [illegible]ompr[illegible]ve Development [illegible] the [illegible] of So[illegible], Vill[illegible] Greenport, Part I, following p. 49.

The traffic counts taken by Suffolk County in its study are purported to be typical of summer weekends and are alleged not to be significantly different from summer weekdays. These counts show a midday peak with the design hour volume being exceeded between 10:30 a.m. and 6 p.m. The traffic problems in Greenport are most prevalent in the summer months, with off-season levels approximating half of those reached in the summer peak season. The major problem areas are located east of Third Street in the business district, with traffic flow problems diminishing west of this intersection."[39]

During periods of peak ferry demand, it is likely that a significant portion of Front Street eastbound traffic would consist of vehicles destined to the ferry site. At Mascony's projected average of 60 percent capacity during the peak season an average of between 50 and 60 vehicles would be destined for the ferry staging area with numerous other vehicles moving toward the passenger-only parking areas. Through adequate signing many of the latter could be diverted off of Front Street at Fourth and by way of Wiggins to the parking area at Third and Wiggins. However, by so doing Mascony runs the risk of interfering with Shelter Island Ferry traffic in the area.

A 60-percent capacity load on the Greenport would consist of 60 vehicles or 18 percent of the design hour volume eastbound on Front Street. However, for a highway situation similar to Front Street, the number of right turns which must be made into the 55-foot alleyway will have the effect of reducing the highway capacity. If capacity at service level D is assumed to be 330 vehicles on Front Street, this reduction for 60 vehicles would be by an estimated 8 percent (i.e., 330 to 304).[40] For those times when the *Greenport* is operating at full capacity, the capacity of Front Street would be reduced by an estimated 15 percent, to 280. The 100 vehicles would then represent approximately 36 percent of the road's capacity.[41]

Traffic exiting from the ferry onto First Street would reach volumes similar to traffic approaching on Front Street and would have to compete with Front Street traffic at a nonsignalized intersection (although Mascony has proposed to station attendants at this intersection the Village of Greenport has challenged its authority to do so). The use of the 55-foot alleyway by exiting traffic making a left turn onto Front Street westbound would result in stoppage of both lanes of traffic on the street during any period of heavy traffic flow.

In view of the fact that Wiggins is one-way eastbound, cars parked in one of the Third Street parcels must exit by way of Third Street, entering the traffic stream with vehicles using the Shelter Island Ferry. In addition, the traffic on Third would be competing with the traffic on Front Street at their signalized intersection.

Table 2 shows the proposed summer schedule of Mascony with corresponding traffic volumes at the Third Street-Front Street intersection for a "typical" summer weekend. It should be noted that should Commission approval be granted for the proposed service, the Commission will have no control over its scheduling.

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[39] Source: Suffolk County Traffic Safety Department.

[40] Source: Highway Capacity Manual, *supra*, table 6.4.

[41] Although Mascony has expressed a willingness, in conversations with Environmental Staff members, to limit trips to 50 percent of capacity in peak season, such a proposal does not appear to be feasible. Not only would such a plan alienate customers, but it would fail to alleviate traffic congestion caused by cars destined to the ferry landing. In fact, there may be an even more adverse impact if these cars are turned back onto Front Street instead of boarding the ferry.

TABLE 2

Mascony proposed schedule		Hourly volumes			
		Front Street		Third Street	
Ferry leaves	Ferry arrives	Eastbound	Westbound	Northbound	Southbound
6 a.m.		30	17	10	5
	7:30 a.m.	150	90	30	13
8:15 a.m.		206	128	40	20
	9:45 a.m.	295	210	80	60
11:15 a.m.		360	270	110	85
	5:30 p.m.	320	360	135	60
7:15 p.m.		270	270	115	45
	8:45 p.m.	245	250	112	40

Source: "Traffic Study, Village of Greenport," Suffolk County Traffic Safety Department (1974).

Two ferry events, the 11:15 a.m. departure and the 5:30 p.m. arrival, appear to present potentially the most serious traffic problems for Greenport with two other events posing additional difficulties. At the time of the 11:15 departure, Front Street traffic moving eastbound already exceeds the design hour volume during the summer months. In view of the fact that this departure may generate greater than average demand because it is the only one scheduled during midday, 100 or more vehicles could be injected into an already congested traffic stream as a result of the ferry. This increase in volume would be accompanied by a concomitant decrease in highway capacity due to the large number of right turns onto the 55-foot alleyway. This situation should create severe congestion problems beyond those which already exist.

At the time of the 5:30 ferry arrival, Front Street traffic approaches or exceeds levels indicative of congestion in both directions. The extent of existing traffic levels severely limits the ability of a substantial number of vehicles, particularly trucks, to execute left turns from the 55-foot alleyway onto Front Street westbound. Most traffic leaving the ferry staging area would consequently have to either make right turns onto Front Street from the alleyway or exit by way of First Street. The former alternative would add to existing congestion problems on Front Street as would the latter since First Street traffic will be competing with Front Street traffic at a nonsignalized intersection. The proposed use of attendants by Mascony to direct traffic across the First-Front intersection would result in traffic stoppages along Front Street. Alternatively there would be serious problems in dispersing the ferry patrons.

It should be pointed out that demand already often exceeds the capacity of Front Street. At such times ferry traffic would have to compete with existing attractions. Therefore, all those seeking to use the ferry or seeking to reach other attractions may not be accommodated by the existing street system, resulting in potentially adverse effects to both due to decreased accessibility.

The 9:45 a.m. arrival and the 7:15 p.m. departure present additional problems. The traffic on Front Street at these hours is heavy. In view of the fact that some vehicles can be expected to arrive early for the 11:15 a.m. and 7:15 p.m. departures, the ferry will be generating both arrival and departure traffic within 1 hour and 1/2 of each other in one case and 1 hour and 45 minutes in the other. At times of peak ferry occupancy, this could have the serious cumulative effect of adding approximately 180 vehicles during these time frames to the already congested downtown area.

It is possible that some portion of the traffic intended for the ferry would enter town by way of County Route 27 to Main Street and move south to Front Street. Access to the ferry landing site would then be by way of right turns onto Front Street and left turns into the alleyway while access to the parking areas would be by way of left turns onto Third Street. The increased number of turns would tend to add to the traffic congestion of westbound Front Street. Another factor to consider is that in times of overdemand (more than 100 vehicles attempting to use the ferry for the same crossing), vehicles approaching the access alleyway to the staging area after this area has reached capacity will stop or slow down, further impeding the flow of traffic.

During the off-season, traffic volumes in downtown Greenport are considerably lower. The above-mentioned adverse impacts of the proposed ferry service on local traffic conditions will, consequently, substantially diminish although concentrated surges of traffic from ferry traffic may cause momentary delays.

Other traffic-related considerations involve the physical condition of the streets themselves. The Village has its own water and sewer systems with installation of sewer pipes on First Street dating back to 1903. The sewer pipes, constructed of vitrified clay with cement joists, are less than 3 feet from the road surface in areas of First Street near Front. There is some concern that heavy truck traffic over the Village's macadam streets, particularly First Street, could result in excess subsurface loads and vibration which may cause the sewer pipes to rupture.[22] Rupture of these pipes would result in the discharge of untreated sanitary sewage into the surrounding area with the possibility of overflow to the street surface. This risk has been reduced to some extent by Mascony's proposal to divert commercial traffic away from First Street when leaving the staging area. Inasmuch as Front Street has a concrete base, the increased traffic is not expected to create any pipe rupture problems with respect to [illegible]

It should be noted that the above discussion is based on the capacities [illegible] involved streets in their present configuration. The Comprehensive Development [illegible] recommends widening and realigning certain streets in the downtown area and restricting on-street parking on Front Street in order to improve downtown traffic flows. In addition, a traffic study conducted by the Automobile Club of New York at the request of the Village in 1961 recommends institution of a one-way traffic system in the downtown area. An example of how traffic flow could be improved would be to divide Front Street into two 11-foot travel lanes and an 11-foot parking lane which would serve as a turning lane near intersections. In view of Greenport's expressed interest in attracting tourist and vacationer-related activity into the Village, some improvements in downtown traffic flow would appear to be necessary. The Village Planning Board is in the process of preparing a traffic flow study which will be presented to the Village Board of Trustees for approval sometime in 1976. At an informational hearing held recently to assist the planning board in formulating a traffic plan, the business community opposed the institution of one-way traffic flows on the ground that traffic would move too rapidly as a result of such a configuration. Opinion was more favorable to removing parking from Main Street than from Front Street, coupled with the development of off-street parking facilities adjacent to business establishments. To the extent that techniques a[illegible] employed to increase the capacity of streets in the downtown area, the adverse impacts on traffic congestion associated with the ferry would be mitigated. However, the willingness of the Village to make major changes in traffic configuration at this time is questionable.

The institution of the proposed ferry service will have the beneficial impact [illegible] easing traffic congestion in the New York City to New London corridor. However, in view of [illegible] daily traffic volumes in this region, particularly in the New York City area, [illegible] of traffic diverted to the ferry will only have a minor effect on existing [illegible]

B. *Energy.*—The proposed service probably will have a beneficial impact on fuel conservation inasmuch as tractor-trailers and passenger vehicles using the ferry should save more fuel than Mascony's vessels will utilize in performing the service. Mascony's primary vessel, the *Cape Henlopen*, consumes 120 gallons of diesel fuel per hour at cruising speed. Fuel consumption during idling is approximately 45 gallons per hour. Therefore, each round trip will utilize approximately 405 gallons of fuel (figuring 3 hours cruising time and 1 hour idling during unloading and loading). The *Cape Henlopen's* engines will be shut down when not in use and restarted one-half hour before departure. Under Mascony's plan of operation, the *Cape Henlopen* will be making 626 round trips annually. These trips will consume approximately 253,530 gallons of fuel. Taking into consideration an estimated 182 hours of startup time unrelated to loading, an additional 8,212 gallons of fuel will be consumed. The Greenport, a steampowered vessel, consumes 360 gallons of diesel fuel per hour during cruising and 70 gallons per hour during idling.[23] Based on consumption of 1,150 gallons of fuel per round trip (for 132 round trips a year), the *Greenport* will utilize 151,800 gallons during actual operations. As with the *Cape Henlopen*, the *Greenport's* boilers will shut down overnight or when not otherwise in operation. The boilers would have to be fired 1 1/2 hours before starting to build sufficient pressure. This will result in consumption of an additional 4,600 gallons, making a total of 170,260 for the year. The two vessels combined, therefore, will consume approximately 432,000 gallons of fuel annually, assuming they remain in service. If the backup vessel *Cape May* is put into service to replace the *Greenport*, fuel consumption will remain essentially unchanged. If it replaces the *Cape Henlopen*, however, fuel consumption will increase.[24]

Quantification of the amount of fuel which would be saved by diverting vehicles from the highways to the ferry is difficult. The first problem encountered in making such a calculation is the lack of certainty regarding the origin and destination of potential ferry patrons. The 1972 survey conducted by the Connecticut Department of Transportation demonstrates the dispersion of origin and destination points in the New England region. Although 95 percent of the vehicles boarding the Orient Point ferry at Orient Point in June 1972 originated their trips in New York, only 37 percent of those boarding in New London showed Connecticut origins. Thirty-nine percent of such vehicles originated in Massachusetts, 13 percent in Rhode Island, and approximately 9 percent from other points outside New York. The destinations of those disembarking in New London were similarly dispersed, with 36 percent of the traffic destined to points in Massachusetts, 31 percent moving to points in Connecticut, 12 percent bound for Rhode Island, and 15 percent destined to points in other States. On the other hand, 93 percent of the vehicles boarding in New London had destinations in New York.

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[22] Source: Letter from Holzmacher, McLendon & Murrel, P.C./Consulting Engineers to Mayor of Greenport, dated April 21, 1975.

[23] Although testimony adduced at the hearing indicated that the *Greenport* consumed 120 gallons per idling hour, this figure was based on firing both generators during idling instead of one as Mascony has proposed.

[24] Mascony proposes to convert its steampowered vessels, the *Greenport* and *Cape May*, to diesel should the application be granted. This would result in a general reduction in fuel co[illegible]tion [illegible]onseq[illegible] an i[illegible] in t[illegible]gnitud[illegible]enefic[illegible]rgy i[illegible].

Another factor complicating the quantification of vehicle fuel consumption in the absence of the ferry is the sporadic nature of ferry-riding habits. Unlike a commuter train or bus service, the bulk of the involved ferry trips are expected to be for social or recreational purposes with the vast majority of customers riding the ferry less frequently than once a month. Regular ridership patterns will, therefore, be extremely difficult to ascertain.

Even if 200 miles, the highway distance between Greenport and New London, is arbitrarily assumed to be the length of the average trip for potential ferry users, actual fuel savings resulting from riding the ferry still cannot be calculated with any assurance. If there was no existing ferry service across the Sound and all potential Mascony users would otherwise have made the trip over the highways, it is obvious that substantial fuel savings would result from the availability of the ferry. Taking Mascony's projection of 66,385 spaces sold annually (which, based on an estimated ratio of 19 car spaces to 1 truck space, would amount to 63,066 automobiles and 3,319 commercial vehicles) annual fuel consumption without the ferry service would be approximately 1.03 million gallons.[25] Therefore, the total fuel conserved by diverting Mascony's projected vehicle traffic from the highways would be approximately 600,000 gallons annually. However, actual conditions impair the utility of this figure. In actuality, Mascony will attract many vehicles that would otherwise have utilized existing ferry service, as well as other vehicles which may not have made the trip at all under existing conditions. To the extent that traffic is diverted from the Orient Point ferry to Mascony, fuel savings will be very minimal, with vehicles originating or destined to western Long Island or the New York City area saving only the amount of fuel needed to travel the 8 miles between Greenport and Orient Point. Furthermore, the ferry may create a demand for itself, attracting passengers who may not have even made the trip without the services of an additional ferry available. To this extent, institution of the proposed service may stimulate vehicle trips and the resultant fuel consumption. On the other hand, the availability of the ferry may encourage potential travelers to leave their automobiles behind and ride the ferry as passengers. Thus, although the proposed service is likely to have a beneficial impact on energy consumption, it cannot be conclusively deemed significant, particularly in view of the total fuel consumed in the New York/New England area annually.[26]

C. *Air quality.*—In view of the lack of heavy industry and predominantly agricultural land use, air quality for the town of Southold is excellent.[27] Suspended particulate and sulfur levels are low, the only potential problem being with settlable particulates such as blowing sand. While the inauguration of the proposed ferry service would lead to an increase in carbon monoxide, sulfur dioxide, hydrocarbons, and nitrogen oxide levels in Greenport and its vicinity due to the rise in vehicular traffic, the impact on ambient air quality in the Village is not expected to be significant.

In New London, levels of particulates, sulfur oxides, carbon monoxide, and nitrogen oxides are all less than national standards. There is a problem in Connecticut with photochemical oxidants, however, attributable largely to hydrocarbons which are emitted by automobiles. The standard of 108 parts per million (ppm) was exceeded during 30 percent of the days between May and September 1975 inclusive, reaching maximums of as much as 25 ppm in nearby Groton.[28] High hydrocarbon levels are dependent largely on the number of vehicle miles traveled in the State and are primarily an areawide rather than local problem due to the broad dispersion of hydrocarbons throughout the ozone layer. Therefore, by reducing the number of vehicle miles traveled on State highways the ferry would have a slight beneficial impact on photochemical oxidant levels. To the extent the ferry generates traffic which would not otherwise be using the highways, it will contribute to the problem. However, concentration of vehicular traffic in Mascony's proposed staging areas could result in carbon monoxide emissions which exceed the national 1-hour standard of 0.040 g/m^3. At Greenport, automobiles and trucks will be staged in an area of approximately 8,100 square feet. During the summer, the period of peak demand for ferry service, the average wind in Greenport comes from the west at about 10 mph and the average temperature is 75° F. At stability class E, which assumes a worst-case situation, concentrations of CO would exceed national 1-hour standards under certain conditions, depending primarily upon the number of vehicles running their motors simultaneously over the course of an hour. (See table 3.) Thus, in almost all instances will standards be exceeded in the immediate vicinity of this area. However, the further the distance from the source the less frequently the standard is violated. Concomitantly, the greater the number of cars in operation at a single time, the greater the possibility that the standard will be exceeded. It is not known how many cars would be running at the same time in the staging area after unloading or while waiting to board. However, if Mascony is able to keep the number under 20 through the use of signs and/or attendants, the impact upon air quality, while adverse, should not be significant. Even at those times when the standard is exceeded, the impact will be of short intermittent duration, affecting only a small area within the village. Emission impacts in the New London Bank and Sparyard staging area, based on similar wind speeds and temperatures at stability class D, would not be significantly different (see table 4). Increased traffic on Front Street should not result in violation of the 1-hour standard. Assuming that 30 cars move continuously on Front Street between Third and First for 1 hour at 5 mph, the 1-hour concentration of carbon monoxide at Front and First would be 0.017 g/m^3, considerably below the 1-hour standard of 0.040 g/m^3. In view of the anticipated lighter congestion at New London, 1-hour concentrations there should be even lower.

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[25] This figure is based on Environmental Protection Agency average fuel consumption figures of 14 miles per gallon for passenger automobiles and 5 miles per gallon for commercial vehicles.

[26] Over 6.2 billion gallons of motor fuel were consumed for highway purposes in New York State in 1973. In Massachusetts, Connecticut, and Rhode Island, the three New England States from which ferry traffic is most likely to be drawn, total highway motor fuel consumption exceeded 4.2 billion gallons in 1973. Source: United States Department of Transportation, Federal Highway Administration, *Highway Statistics*, 1973. The projected fuel savings attributable to the ferry, even if the liberal figure of 600,000 gallons is assumed, would represent less than one-hundredth of one percent of this total.

[27] Source: New York State Department of Environmental Conservation, Air Resources Division.

[28] Source: Connecticut Department of Environmental Protection, Air Compliance Unit.

TABLE 5

Emission factors for inboard vessels emission factor rating: D

Pollutant	Steamships[a]				Motorships[b]			
	Underway		In-berth		Underway		In-berth	
	lb/mi	kg/km	lb/day	kg/day	lb/mi	kg/km	lb/day	kg/day
Particulate	0.4	0.098	15	6.8	2	0.49	16.6	7.5
fur dioxide[c]	7S	1.71S	300S	136S	(SO$_x$) 1.5	0.37	43	19.5
fur trioxide[c]	0.1S	0.02S	4S	1.8S				
Carbon monoxide	0.002	0.0005	0.08	0.036	1.2	0.29	46	20.8
Hydrocarbons	0.2	0.05	9	4.1	0.9	0.22	33	14.9
rogen oxides (NO$_2$)	4.6	1.15	200	90.7	1.4	0.34	50	22.7
nydes (HCHO)	0.04	0.01	2	0.9	0.07	0.017	2.6	1.2

[a] Based on fuel consumption data and emission factors for fuel oil.
[b] Based on fuel consumption data and emission factors for diesel fuel.
S—weight percent sulfur in fuel; assumed to be 0.5 percent for diesel.
ource: Environmental Protection Agency, "Compilation of Air Pollutant Emission Factors," April 1973.

TABLE 3

Estimated carbon monoxide emissions at proposed Greenport staging area (national 1-hour standard - .040 g/m³)

N	A		B		C	
	5 mph	Idle	5 mph	Idle	5 mph	Idle
10	[1].036	.053	.020	.029	.013	.01
20	.071	.105	.039	.057	.025	.037
30	.107	.158	.059	.086	.038	.057
40	.142	.210	.077	.114	.049	.073

[1] Estimated emissions of CO in g/m³.
N—Number of cars in operation simultaneously.
A—Observer at 0 feet.
B—Observer at 45 feet (east).
C—Observer at 90 feet (east).

TABLE 4

Estimated carbon monoxide emissions at proposed permanent New London staging area (national 1-hour standard - .040 g/m³)

N	A		B		C	
	5 mph	Idle	5 mph	Idle	5 mph	Idle
10	[1].032	.048	.015	.023	.010	.015
20	.065	.096	.031	.046	.020	.029
30	.097	.144	.046	069	.030	.044
40	.129	.191	.061	.091	.039	.058

[1] Estimated emissions of CO in g/m³.
N—Number of cars in operation simultaneously.
A—Observer at 0 feet.
B—Observer at 45 feet (east).
C—Observer at 90 feet (east).

Emissions from the ferry engines should not present a problem. Emission factors for oil-burning steam and diesel electric engines for inboard vessels are presented in table 5. In view of the limited number of ferry trips per day, the impact on air quality both over the Sound and in the involved ports will not be significant. Ferry emissions while crossing the Sound should be easily dispersed.

Finally, by providing a water route between New England and Long Island, the ferry will eliminate the need for many vehicles to traverse the congested New York City area in order to reach their ultimate destinations. While this will be beneficial to air quality in the region, the quantitative impact will be extremely minimal in view of the high existing levels of pollutants and the minute percentage of total area traffic which stands to be diverted.

D. *Water quality.*—The water quality in New London Harbor, including the Shaw's Cove area, has been classified as "SC" by the Connecticut Department of Environmental Protection with the intent to eventually reach "SB" status.[29] The water quality around Greenport is generally good, although the harbor is closed to shellfishing.

The main threats which the ferry will pose to water quality involve possible discharges of sanitary wastes, oil, litter, bilge, and wash water, and the possibility of thermal pollution.

Mascony will install holding tanks in its vessels and pump the waste discharge either into its own self-contained tanks equipped with a filter system or directly into the municipal sewer system at New London. After the waste passes through Mascony's tanks it would only be pumped back into the New London harbor if the discharge was of a quality capable of meeting applicable State and Federal standards. Otherwise, the discharge will be pumped into the sewer system. Mascony will use fresh water as a flushing medium and plans to utilize approximately 3 gallons per passenger. The largest strain on the New London Sewage Treatment Plant will be during the summer peak when Mascony anticipates attracting 150,000 passengers, one-half of its total annual volume. At this time the discharge into the New London sewer system would be approximately 1,700 gallons per round trip or 6,800 gallons each day. The New London Sewage Treatment Plant has a design capacity of between 3 and 3.5 million gallons per day. However, average flows now exceed capacity during times of peak ferry service, ranging between 3.63 million gallons per day in August and 4.48 million gallons daily in May. Despite the fact the plant's design capacity is regularly exceeded, the only danger of overflow occurs in the spring, a period during which Mascony's contribution to the daily flow would be much less than the peak average of 6,800 gallons per day. The New London Sewer Authority indicates that the increase in flow attributable to Mascony's operations, even during peak periods, would be nominal.

As with sanitary wastes, the litter problem will be a function of ridership and thus is expected to be most serious in the summer. Inasmuch as the snack bars on Mascony's vessels will be indoors and are equipped with sitdown eating facilities, litter in the Sound and harbors should not be significant.

Under the Federal Water Pollution Act and the Water Quality Improvement Act it is illegal to discharge oil from any vessel into or upon the navigable waters of the United States. Federal pollution control regulations require a holding tank with sufficient capacity to contain fuel wastes and a piping system to pump such wastes to a shoreside facility or discharge point. Mascony's holding tanks will be of sufficient capacity to contain such wastes and a pumping system will be put into operation.

Accidental oil spills are a possibility with any ferry operation. Inasmuch as Mascony is applying for an initial operating certificate, there is no indication of how effective its spillage control procedures will be. However, if it is assumed that Mascony will use ordinarily prudent care in avoiding fuel spillages, the threat to water quality should be minimal. There should be no thermal pollution problems with Mascony's steampowered vessels since their engines would be water-cooled and surrounding water temperatures would not be significantly raised.

Although there may be temporary increases in turbidity due to installation of dolphins and bulkheads and backfilling in Mascony's ferry slips, the impact will be only minor and short term. It should be noted, however, that steel sheet pilings may alter the movement of ground water, thereby modifying adjacent water tables. The Connecticut Department of Environmental Protection has certified that Mascony's proposed New London improvements (as originally set forth was dolphins extending into the secondary channel) will not permanently violate Connecticut's water quality standards. Mascony's revised plan should have a similar nonadverse impact. The New York State Department of Environmental Conservation has issued Mascony a Tidal Wetlands Permit, Steam Protection Permit, and Water Quality Certification based on its revised operating proposal in Greenport. It was found in the department's report granting the above permits and certification that the underwater lands to be disturbed by pile driving operations for dolphin installation will be entirely beneath tidal waters and that no wetland vegetation o marsh areas will be endangered. Roiling of the water during installation will only be temporary and in the immediate vicinity of the dolphins. The State Department of Environmental Conservation has further concluded that the Greenport project will not cause unnecessary damage to the State's waters.

E. *Historic.*—There are numerous historic sites in New London listed in the National Register of Historic Places (see table 6). Of these sites, only the customhouse and the railroad station are located in the immediate area of Mascony's two proposed ferry landing sites. The railroad station, located at the foot of the State Street directly opposite the municipal pier, was constructed in 1887 and has been attributed to the noted American architect Henry Hobson Richardson.[30] Present plans call for the Romanesque Revival structure to be converted into commercial space and a restaurant with Amtrak continuing to utilize space for passenger operations. Use of the municipal pier for the proposed service will not block access to the station, there being sufficient space to stage and store vehicular traffic, and existing streets should adequately handle the extra volume. The inclusion of the Mascony ferry in the multimodal transportation terminal planned for the New London waterfront will enhance tourist access to this historic site as will the planned rejuvenation of the waterfront in general. In conjunction with these plans, certain renovations to the station building and the immediate area are already being undertaken. The customhouse, constructed in 1833 by the notable architect Robert Mills, is located in the Shaw's Cove area on Bank Street. Renovation of the area will show this site off to better advantage as blighted buildings are torn down or rehabilitated and Bank Street is widened. Institution of the proposed service will increase tourist access to the site from the water. Although Bank Street will become more congested until it is widened, the thoroughfare should be sufficient to permit adequate access to the customhouse by automobile.

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[29] Class "SC," which is one level above unacceptable, is described as suitable for fish, shellfish, and wildlife habitat; suitable for recreational boating and industrial cooling and of good aesthetic value. Class "SB" is suitable for bathing, other recreational purposes, industrial cooling, and shellfish harvesting for human consumption after depuration. It is also an excellent fish and wildlife habitat and of good aesthetic value.

[30] Source: United States Department of Interior, National Park Service, "Historic Railroad Stations" (1974).

TABLE 6

New London historic sites

Site	Location
Nathaniel Hempstead House (Old Huguenot House)	Corner of Jay, Hempstead, Colt, and Truman Street
Deshon-Allyn House	613 Williams Street
Joshua Hempstead House	11 Hempstead Street
Monte Cristo Cottage (Eugene O'Neill House)	325 Pequot Avenue
New London County Courthouse (State Courthouse)	70 Huntington Street
New London Customhouse	150 Bank Street
New London Public Library	63 Huntington Street
Shaw Mansion	11 Blinman Street
Whale Oil Row	105-119 Huntington Street
Fort Trumball	Fort Neck
New London Railroad Station	Foot of State Street
Thames Shipyard	West bank of Thames River, north of Coast Guard Academy
Williams Memorial Building Institution[1]	110 Broad Street

[1]Eligible site.

Source: National Register of Historic Places.

The Connecticut State Historic Preservation Office indicates that Bank Street itself may be eligible for inclusion in the National Register of Historic Places. The De Noia Bros. Furniture Store (otherwise known as Bassett House), a three-story stone residence of the federal style built in 1836, is listed on the Connecticut Statewide Inventory of Historic Resources. This building, located on Bank Street, stands on the property which Mascony proposes to use as its permanent staging area. The City Redevelopment Agency has indicated its desire to maintain and rehabilitate this structure and Mascony proposes to restore it and utilize it as a combination ticket office and waiting station for ferry patrons. Applicant does not contemplate demolishing any other building on Bank Street. The instant proposal, therefore, would have no adverse effect on historic resources in New London.

There are no sites in the National Register of Historic Places listed for Greenport or its environs. However, the Greenport Nature Study Area, located north of NYS 25 and west of the downtown area, has been recommended as a potential natural landmark under the National Landmarks Program administered by the National Park Service of the U.S. Department of Interior. The study area is described as an exceptionally fine example of a mature upland hardward forest and the only known area where the Crane Fly Orchid can be found. Marbled, tiger, and spotted salamanders, all of which are endangered in Long Island, also inhabit the study area.[31] The only potential impact which the ferry might have on this area would be the facilitation of exposure of the area to a greater number of people. The danger from overuse of the area by the masses should be slight, however, since a large percentage of ferry patrons are expected to spend only a minimal amount of time in the Village.

F. *Safety.*—Potential safety problems with the proposed action exist both on land and in the water. The proposed ferry landing at Bank and Sparyard Streets in New London necessitates access over the ConRail main line tracks by means of a private grade crossing which is currently not protected by any fail-safe signal. Twenty-six scheduled passenger trains and four freight trains move over the track daily. Although westbound trains have an unobstructed view of the crossing 1,200 feet before they approach it, the crossing is located 120 feet from the end of a sharp curve for eastbound trains whose view of the crossing is obstructed by an old warehouse building located on the dock side of the tracks. The authorized maximum speed for trains moving over the crossing is 25 miles per hour.

In conjunction with Mascony's application to change the use of, widen, and install an automatic protection device over the crossing, a hearing was held on this matter before the Connecticut Public Utilities Commission (PUC) on May 30, 1975. However, the PUC did not resolve the safety issue and dismissed the application without prejudice in light of the denial of applications by this Commission and the State Department of Environmental Protection.

In view of the frequency of train arrivals at the New London station, scheduling around them, particularly during the summer peak, would be difficult. Potential dangers can be mitigated, however, by installation of fail-safe crossing signals and the strategic stationing of attendants along the tracks to keep the tracks clear.

The view from the tracks approaching the station adjacent to the municipal pier is relatively unobstructed and a fail-safe protection device is already in place at the public grade crossing. Mascony also plans to station attendants at the crossing.

The increase in traffic congestion in Greenport, particularly the increase in the number of left turns being made by traffic exiting the ferry onto Front Street, is likely to result in an increase in automobile accidents in an area which is already the most accident-prone part of the village. The possibility of accidents would also increase at the potentially dangerous intersection of Webb, First, and Main Streets. Furthermore, stoppage of traffic on Front Street may block access to the Shelter Island ferry by way of Third Street for ambulances needed on Shelter Island. Shelter Island lacks hospital facilities and must depend on ambulances being ferried over from Greenport to answer emergency calls. However, alternate means of access to the Shelter Island ferry would still be available through Wiggins and Fourth, Fifth, or Sixth Streets.

Another safety issue of potential importance is the ability of Mascony's vessels to navigate in Greenport Harbor without endangering fishing or pleasure craft. Small craft activity in the harbor is high during the summer months and collisions between such boats and Mascony's vessels are possible. However, if reasonable care is taken to observe the navigational "rules of the road," the danger to fishing or pleasure craft should not be serious.[32]

G. *Socioeconomics.*—The Greenport Planning Board alleges that the increased vehicular traffic generated by the institution of Mascony's service will have an adverse impact on the Village's development insofar as increased congestion in the downtown area may discourage regular seasonal tourists or inhabitants of nearby villages from visiting Greenport to vacation or shop. The board further contends that ferry users will view the Village merely as a ferry terminal and will quickly pass through town on the way to their ultimate destinations. While it is true that many ferry patrons will view Greenport in this way, it is also likely that many others will probably take the time to patronize Village retail establishments before boarding or after disembarking. The enhanced accessibility of downtown Greenport to New England tourists may well have a stimulating impact on the town's economy, although it is also possible that the presence of the ferry in Greenport Harbor may discourage fishing and pleasure boating activity during ferry arrivals and departures. Concomitantly, tourism in New England and eastern Long Island in general should be stimulated by an additional ferry link between the two regions.

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[31] Source: Smithsonian Institution, "Survey of Natural Areas of the Atlantic Coastal Plain—Ecological Themes" (1974).

[32] United States Coast Guard, Marine Safety Division.

The inauguration of an additional ferry service may also be beneficial to Long Island potato growers by expanding their markets into New England. By decreasing transit times and reducing fuel costs, the ferry will allow goods to be transported more efficiently and tend to promote commerce between New England and Long Island.

The presence of the ferry in New London would assist that city's effort to rehabilitate its waterfront. Since most of the land in New London is already developed, economic growth in the city will depend largely upon more intensive development of this land. Renewed commercial use and development of waterfront property such as that proposed by Mascony would have a beneficial impact on economic growth within New London.

Institution of the proposed service will also result in a small increase in employment inasmuch as Mascony will employ between 12 and 26 crewmen during the course of each year. It should be noted that this impact will be minimized in the event increased competition forces Cross-Sound to cut back or discontinue its Orient Point service.

H. *Aesthetics.*—The Village of Greenport projects a charming, fishing village ambiance with its narrow streets, pleasure and fishing boat marinas, and large old houses. The increase in passenger and commercial vehicles generated by the Mascony ferry and its attendant congestion will tend to diminish appreciation of these aesthetically pleasing qualities in the downtown area. Furthermore, Mascony's large vessels will be incongruous with the aesthetics of the waterfront itself.

The aesthetic impact on New London, on the other hand, will be minimal. The harbor area houses several other commercial ferry vessels in the general vicinity and the aesthetics of the area are poor. To the extent that granting the application results in the demolition of unsightly commercial buildings in the Shaw's Cove area, there will be a slight beneficial effect on the area's aesthetic values.

I. *Noise.*—The increase in vehicular traffic generated by the ferry will result in a rise in ambient noise levels in New London and Greenport during the periods surrounding ferry arrivals and departures. Noise levels resulting from more than one source at a point are obtained by adding logarithmically. For example, while one source may emit a noise level of 50 decibels, two sources of this magnitude would produce a combined noise level of 53 decibels and three sources would result in a noise measurement of about 54.8 decibels. Therefore, the more sources that are introduced, the lower the incremental contribution will be from any new source.[33] Consequently, a very significant noise intrusion would be required to substantially change current ambient levels. However, the increase in traffic congestion in downtown Greenport may result in the spreading of downtown noise levels to areas further west on Front Street. Concomitantly, diversion of traffic from the highways between New York City and New England will result in immeasurable reductions of ambient noise levels in this corridor.

Insignificant noise intrusions will result from the sound of the ferry's engine and its whistle (if blown) as well as from the short-term pile driving of dolphins.

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[33] It should be noted, however, that loudness increases exponentially as decibels increase arithmetically. Sixty decibels may, therefore, be twice as loud as 50. However, at current levels of traffic in downtown Greenport, the additional noise generated by ferry traffic will not be significant.

J. *Wildlife.*—The proposed operation will have no impact on the shellfish, primarily scallops and oysters, which are found in the waters off Greenport. The area encompassing the Harbor is closed to shellfishing in view of the existing sources of bacteria already present while the water beyond the harbor area is so deep that the shellfish beds on the botton will not be disturbed by vessels with the size draft possessed by Mascony's ferries.[34]

The northeast corner of Mascony's Bank and Sparyard Street piers contains an exposed mud flat that gradually slopes to a depth of about 8.5 feet. In the slope, a healthy stand of eel grass was found during field inspections conducted by the Connecticut Department of Environmental Protection in July 1973, and May 1974. Sea lettuce, rockweed, and blue green algae was also prevalent on rocks and an abundance of barnacles was attached to the old pilings, rocks, and pier structure. Invertebrates, including polychaetes, nereids, scale worms, amphipods, green crabs, and possibly oligochaetes, are present along various portions of the pier. Fourteen varieties of fin fish, including bluefish, winter flounder, and smelt, have also been identified as utilizing the area around the pier. Restoration of the existing bulkhead would provide a habitat to a wider variety and number of marine organisms.[35] It should be noted that analysis of water quality and marine life impacts resulting from restoration and installation activities in both Greenport and New London should be presented in greater detail in environmental studies to be conducted by the Corps of Engineers as a prerequisite for action on Mascony's application for Corps permits.

IV. *Alternatives to the proposed action*

In accordance with the full disclosure aspects of NEPA, reasonable alternatives to the proposal will be presented below even though in some instances Commission jurisdiction may be limited. It should be noted at the outset that section 309(d) of the Interstate Commerce Act prohibits the Commission from restricting the right of a water carrier to add to its equipment, facilitities, or service within the scope of a certificate, as the development of the business and the demands of the public shall require.

A. *No action.*—The no-action alternative, which entails denial of the application, would serve to maintain the status quo. Automobiles and trucks seeking to travel between New England and Long Island would either have to utilize existing ferry services or, to the extent such service is incapable of meeting demand, utilize more circuitous highway routes. Consequently, fuel may be utilized less efficiently if trips which could partially be made by ferry are made entirely over the highways. Travel between the two areas may also be less convenient and social and pleasure trips may, consequently, be less frequent than if the ferry was available.

Denial of the application would also result in the maintenance of existing Greenport traffic patterns by precluding the introduction of a large influx of ferry-related traffic. The Village's progress as a tourist attraction would neither be hindered by clogged streets nor helped by the large number of ferry travelers which would enter town. Greenport would be more free to develop its waterfront along the lines of its Comprehensive Development Plan.

Inaction would have only a minimal impact on New London, which is already served by existing ferry service. While an additional service would be consistent with the city's development plan, the plan is not dependent on a grant of the Mascony proposal.

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[34] Source: New York State Department of Environmental Conservation, Region 1, Water Quality Unit.

[35] Source: Connecticut Department of Environmental Protection.

Finally, a denial of the application would preclude potential safety hazards in New London and Greenport Harbor. While potential adverse impacts on air and water quality in the affected areas will be avoided, these impacts would not have been significant with the ferry in operation.

B. *Alternative sites.*—1. *Greenport.* The primary alternative site for the proposed service in Greenport would be the area south of the Long Island Railroad tracks. Staging would have to be accomplished south of the tracks if this site were to be used because the area north of the tracks is leased for a term of 20 years to Suffolk County and subleased to the Village which uses it to store cars for the Shelter Island ferry. The land was made available for such purpose at no charge to the Shelter Island ferry in order to avoid the necessity of staging vehicles on Wiggins Street. The Shelter Island ferry also hold a 15-year lease over a 4,000-square-foot parcel directly north of the railroad station and adjacent to its landing site.

This site would be preferable from an environmental standpoint since it would divert traffic fron the congested downtown area. Eastbound vehicles destined for the staging area could turn off Front Street at Fourth Street and cross over the railroad tracks at grade into the staging area. Safety problems would be minimal in view of the infrequency of existing rail passenger service into Greenport. The railroad site would also alleviate potential safety problems in the harbor by shifting the landing site away from the numerous marinas adjacent to Mascony's presently proposed site. Existing Mascony properties could still be utilized for parking and staging purposes, although use of the railroad property for staging purposes would be preferable in order to avoid congestion on Third Street. The railroad is willing to discuss leasing this property to Mascony provided its right to future use of the property is protected and Village and county officials are amenable to ironing out potential problems.[36] Use of the railroad site would have the disadvantage of requiring some dredging in the harbor and using a residential street, Fourth Street, for access.

Other potential sites may be available for ferry use in the northeastern part of the Village. The feasibility of these sites has not been given serious consideration in view of the fact that Mascony has invested substantial sums of capital in property south of Front Street. If property for a parking, staging, and docking area could be made available in this area, ferry-related congestion on Front Street would be relieved since vehicles could utilize County Road 27 and Main Street to gain access to the ferry without entering the downtown area. However, in view of the fact that residential streets unaccustomed to handling tourist-related traffic will have to be utilized for ferry access, some disruption of residential enjoyment of the area may result.

While the Commission lacks the necessary authority to require Mascony to utilize one of the above-identified alternatives instead of its proposed site, use of any site is contingent upon approval of a Site Development Plan by the Village pursuant to Article IX of the Greenport Building Zone Ordinance.

The Tri-State Regional Planning Commission, in a study issued in December 1975,[37] considered nine potential pairs of termini for a tentative State-run cross-sound ferry operation. Greenport and New London were one of the pairs considered, with the studied site in Greenport being located on the eastern shore of the village. The study concluded that the overall feasibility of running a ferry service between New London and Greenport was poor, based primarily on the economic costs and poor highway access. It should be noted, however, that such projections were based on substantially higher volumes (between 200,000 to 2 million vehicles annually) than those projected by applicant. The study rated the impact and feasibility of site access and terminal location and construction as good.

2. *Other points on Long Island.*—In the event the application is denied due to operational problems in Greenport and other sites in Greenport are not feasible, Mascony could consider filing a new application seeking authority from another location in Long Island.

Mascony has already investigated alternative locations and presented an operating proposal to the village of Sag Harbor during the summer of 1975. Sag Harbor is located on the north shore of the South Fork of Long Island, on the southern shore of Gardiner's Bay (see figure 1). Use of Mascony's proposed Sag Harbor site would involve problems similar to what it now faces in Greenport. The docking site would be located directly north of the business direct which is characterized by quaint, narrow streets as in Greenport. Inasmuch as Sag Harbor is also a popular summer resort village, traffic problems are likely to arise during the summer months. An additional problem would be created in view of the fact that the entire Sag Harbor Village District is listed as an historic site in the National Register of Historic Places. The potential impact of ferry traffic on village streets may adversely affect the village to the degree that a Sag Harbor proposal could require preparation of a statement under §106 of the National Historic Preservation Act. A Mascony spokesman has informed the Environmental Staff that it would not file an application seeking authority from Sag Harbor unless it received support from the village. Testimony at public meetings regarding the proposal showed a mixed reaction among the townspeople, although some vehement opposition was expressed, and an organized antiferry group in Sag Harbor has started efforts aimed at mobilizing opinion against the ferry should an application be filed.

In addition to New London and Greenport, the Tri-State Regional Planning Commission study cited above evaluated the following sites as potential ferry termini for a cross-sound service (the Connecticut termini are listed first in all cases): (1) Stamford-Lloyd Point, (2) Sunken Meadow-Sherwood Point, (3) (a) Bridgeport (current site)-Port Jefferson, (3) (b) Bridgeport (Fayerweather Island)-Port Jefferson, (4) New Haven-Wading River, (5) Guilford Centreville, (6) Westbrook-Hashamock Beach, (7) Saybrook Point-East Marion, and (8) New London-Orient Point. Each pair was analyzed with respect to economic viability and the impact and feasibility of highway access, site access and terminal location and construction. Based on 100-vehicle vessels carrying a projected 500,000 vehicles per year, it was concluded that major services would be feasible only at sites (3)(a), (4), (5), and (8) with Bridgeport-Port Jefferson and New London-Orient Point being the most attractive alternatives. Despite this conclusion, the report stated that problems could be anticipated with respect to improving highway access at Port Jefferson, terminal construction and site access at Wading River, highway access at Guilford, and terminal construction at Centreville and Guilford. Except for Orient Point, none of these Long Island sites is feasible in conjunction with Mascony's New London terminal. The Saybrook Point-East Marion location was rejected primarily because of problems associated with the Connecticut site. East Marion is located between Greenport and Orient Point and may present a feasible alternative to locating at Greenport inasmuch as it is accessible to [illegible]ny's [illegible] London [illegible]inal. [illegible]ever, [illegible] the [illegible] Marion [illegible] studied in the Tri-State report would entail construction [illegible]00-foot [illegible] ca[illegible]y in [illegible] for vessel depths to be adequately accommodated.

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[36] [illegible]urce: [illegible] from [illegible] L. Sc[illegible], Jr., [illegible]nt, L[illegible]sland R[illegible]l, dat[illegible]rch 1, [illegible]

[37] "Crossing the Sound: A Study of Improved Ferry Service on Long Island Sound."

C. *Operational changes.*—In lieu of changing sites, Mascony might be able to alleviate adverse impacts by making changes in its operating proposal. It might, for example, rearrange its schedule to avoid adding to traffic in the Front Street area during peak daily periods or it could stay out of Greenport during the peak season entirely.[38] While such steps would clearly mitigate adverse impacts associated with its existing proposed schedule, it is doubtful that such an operating plan would adequately serve the public during periods of greatest demand. Furthermore, it is questionable whether Mascony could maintain a viable operation without revenues from these periods of high demand.

Traffic congestion on Front Street could be alleviated to some extent if Mascony was able to obtain a right-of-way over the property of East End Supply (see figure 4). Ferry-related traffic could either exit or enter the staging area through Third Street without competing with Front Street traffic between Third and Main, the area where traffic levels are highest. As table 1 indicates, hourly volumes on Third Street are much lower than those on Front in spite of the fact that it is 17 feet wider. Traffic moving onto and off Front Street by way of Third would be competing with Front Street traffic at a signalized intersection. Traffic flow, therefore, would be smoother and safety hazards would be reduced. However, East End Supply is unwilling to make a right-of-way over its property available to Mascony.

V. *Adverse environmental effects which cannot be avoided*

Barring significant changes in Greenport's street alignments or traffic flow configurations, traffic generated by the proposed action will increase congestion on Front Street in Greenport which already frequently reaches its capacity during the summer months. Less severe traffic congestion may also occur in New London during peak periods.

This increase in vehicular traffic concentration within a relatively small area of Greenport will enhance the potential for accidents, as will the movement of vehicles across railroad tracks in New London. The potential for boat collisions within Greenport Harbor will also be increased. While there may be adverse impacts on air pollution in Greenport and New London, these impacts will be of short duration and concentrated in small areas and, to a small extent, will be counterbalanced by improvements in the environment between New London and New York City. Mascony's vessels will consume an estimated 432,000 gallons of fuel per year. Automobile and truck fuel savings attributable to utilization of the ferry should, however, result in less overall fuel consumption. Impacts on noise and water pollution should not be serious.

VI. *The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity*

The introduction of an additional ferry service linking New England and eastern Long Island is likely to have a beneficial impact on productivity. Producers in both areas will be able to expand their markets or market their goods more efficiently as a result of the fuel and travel [illegible] conserved by utilizing the ferry.

The potential increase in the [illegible] of recreational trips between the two regions stimulated by the proposed ferry would benefit areawide economies. The local economic impact on Greenport, however, is uncertain in view of the possibility that the injection of ferry travelers into the village could have both positive and adverse effects on its attractiveness to tourists and boaters.

VII. *Any irreversible and irretrievable commitments of resources which would be involved should the proposed action be implemented*

A grant of the application would result in removal of Mascony-dedicated prop in Greenport from use for off-street parking or pedestrian walkways as recommended in the Village Comprehensive Development Plan. Use of Mascony's New London properties for other potential commercial or recreational purposes will also be precluded.

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[38] It should be noted that the Commission lacks authority to require such changes.

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APPENDIX

Applicant's public witnesses

Name	Location	Used	Frequency	Reason	Comments
1. Harriett Campbell	Framingham, Mass	Yes	Every other month	Pleasure	Not able to get car on ferry, but went as a walk-on passenger. Mainly used on Friday nights July 1972 through July 1973.
2. Joseph E. Housewaher.	Groton, Conn	--do--	Once 5 years ago	--do--	Unable to take car on ferry. Car brought over the next day.
3. James Davis	Waterford, Conn	----	----	----	Representative of United Brotherhood of Carpenters and Joiners of America. It supports the application to spur the building industry.
4. Daniel S. Rattiner	Bridgehampton, N.Y	Yes	Last used in fall of 1969.	Business	Was dissatisfied with the service and has not used it since.
5. Marilyn Bokee	Mattapan, Mass	--do--	Once a month	Pleasure	No problem as a passenger. Two- to 3-hour wait if car is taken. Boats are clean.
6. Constance Conti	East Providence, R.I	--do--	Frequently	--do--	Two- to 3-hour wait with a car, no problem if without one. Traveling usually in summertime.
7. C. Francis Driscoll.	New London, Conn	----	----	----	Testified concerning the protective devices for the railroad grade crossing adjacent to applicant's proposed docking facility in New London.
8. Pat DeNoia	Groton, Conn	Yes	Frequently	Pleasure	Long delays in boarding. As much as 4 hours. The boats have insufficient seating.
9. Nicholas Waviotis	New London, Conn	----	----	----	Operates a restaurant across from protestant's terminal, states in summer there are long lines of cars waiting for service and many others leave without waiting.
10. [illegible] Sweet	Groton, Conn	Yes	Two trips during July 1971.	----	Had to wait for the boat once, did not enjoy the trips.
11. John De[illegible]aure	--do--	No	----	----	Believes proposal would benefit the economy.
12. Mar[illegible]der	Chesnut Hill, Mass	Yes	Twice a year in July and August.	Pleasure	Did not find the employees courteous and the boat was old and dirty.
13. Charles E. Webb	Orient, N.Y	--do--	One-12 times a year in spring, summer, and fall.	Personal	Had to frequently wait 2 hours for a boat. Would not be satisfied with service every 4 hours.
14. John B. Tuttle	--do--	--do--	Two or three times a year.	----	Observed long lines waiting to board. The property in Orient is not kept clean from paper and cans.
15. Joe DeRobrega	Groton, Conn	--do--	As many as six times a year prior to 1973.	Business and pleasure.	Long waits, as much as 1-5 hours
16. Nicholas Palmerone.	--do--	--do--	In the past used it once or twice a month.	Business and pleasure.	Was unable to board on three occasions in July on Sundays.
17. Dean Zanni	Old Saybrook, Conn	----	----	----	Served on protestant's vessels between 1960-66 and on occasion saw vehicles left behind during this time.
18. Father Ivan Ferguson.	Tariffville, Conn	Yes	Frequently during summer and holidays.	Pleasure	Has ceased to use the ferry because of the long delays (2 hours).

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Appendix

Applicant's public witnesses—Continued

Name	Location	Used	Frequency	Reason	Comments
19. Frank Arbour	Groton, Conn	Yes	Once in 1973 and once in 1971.	Business and pleasure.	Vessel left late in 1973 and could not board in 1971 on the day desired.
20. Gloria Shafter	New London, Conn	----	----	----	Works at a motel as a desk clerk and stated people come in who are unable to take the ferry as they had planned.
21. Melvin Jetmore	Niantic, Conn	----	----	----	Lived in New London and observed lines of cars waiting to board. Believes additional competition would be good for service and New London.
22. Augustino Delfarno.	Lincoln, R.I	Yes	Not since 1966	Business	President of a trucking firm T. Delfarno Trucking Company. Holds authority to transport building supplies from Providence, R.I., to points in New England. Used the ferry but discontinued use because of delays. Trips to Long Island would be 1 day instead of 2 as presently, but would need service by 7 a.m. to make Long Island deliveries at 9 a.m.
23. Mathew J. Cimini	North Providence, R.I.	----	----	----	Was dispatcher for T. Delfarno Trucking Company during 1965-66. Testified concerning inability to get trucks on the ferry prior to discontinuing use of the ferry service.
24. Lydia Beat	Groton, Conn	Yes	Twice in 3 years	Pleasure	In summer of 1972, she was warned if she took her car over she might not be able to get it back that day. She was concerned about a bridge in this area.
25. Linda Parker	--do--	No	----	----	Will not use the ferry because it doesn't permit reservations.
26. Ella May Bernard	Greenfield, Mass	Yes	Twice a month in 1963, once a month now.	To see a doctor.	On two Fridays in July 1973 had to drive around because ferry was full. Had to wait 1.5 hours each time for a ferry on two trips in August. Her husband missed one-half day of work on October 12, same thing.
27. Bernard Coulombe	Rockville, Conn	--do--	Once a day June through October.	Business	Hauls exempt commodities from Long Island to points in Massachusetts from June to October. Had long waits—10 a.m. until 2 p.m. On two occasions drove around. With applicant's service he believes he could make more trips and save miles.
28. Father Paul C. Kintzing	Providence, R.I	--do--	Once a year	--do--	Usually has a 4-hour wait. Would like a reservation system. Last time, no wait at all.
29. Casleva Mason	Greenfield, Mass	--do--	Once to twice a summer	Pleasure	One time had to wait 6 hours and another was turned away.
30. Jacqueline Kintzing.	Providence, R.I	--do--	Once a year	----	Asked to have a reservation system but was refused.
31. Ernest York	Mars Hill, Maine	--do--	Every day between August and October.	Business	He is a trucker hauling exempt commodities (potatoes) from August to October. On one occasion he had to wait 7 hours. On other occasions he had to wait 4 hours. He has had to drive around when unable to get a ferry.

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Appendix

Applicant's public witnesses—Continued

Name	Location	Used	Frequency	Reason	Comments
32. Howell Topping---	Wainscott, N.Y------	Yes----	Three trips a week from July through September.	Business-------	Operates a truck and farm. He transports potatoes, and uses the ferry to save time to comply with driving time regulations. Has had waits of 6 hours. Drives around once a year. Hauls seed potatoes during April without trouble. He has had to crawl out the truck window when loaded.
33. Raymond Faver ---	Stonington, Conn ---	--do---	Seldom------------------	Pleasure------	Would use the service more if he could get reservations.
34. Phillip Michalowski.	New London, Conn ---	-------	----------------------	--------------	Is the developing coordinator for New London and testified concerning the railroad crossing adjacent to applicant's docking facilities, and efforts to get permission to retain the present crossing instead of an overpass.
35. Barbara Meichner-	Southampton, N.Y ---	Yes ---	Twelve times annually---	--------------	Attends college in New London. Had to wait 2-4 hours for a ferry. Once 6 hours.
36. Robert T. Turk---	New London, Conn ---	-------	----------------------	--------------	Is executive director of the New London Redevelopment Agency. Testified the proposed service would help rejuvenate the docking area of New London.
37. Frank E. Hawley--	Shelter Island, N.Y-	Yes----	Three or 4 times annually.	Pleasure------	Poor service in the summertime. On August 24, 1973, arrived at 9:30 a.m. but was told the first ferry he could catch would be 2 p.m. Drove around. Has driven around in the past because of the fear of being unable to board without a long wait. Has used the ferry in October with no problems.
38. Edmond McTernan--	Stony Brook, N.Y---	--do---	Ten-12 times annually--	Business------	Drives around to Boston because of trouble with the ferry service, but uses it from New London. Has waited as much as 6 hours. On one occasion, just before Thanksgiving, could not board last vessel.
39. Gertrude Reilly--	Sag Harbor, N.Y ---	--do---	Ten times annually---	Pleasure------	Has waited 6 or 7 hours. Would prefer reservations. Saves 500 round trip miles by using the ferry. In November had no trouble using service.
40. Helen Braes------	------do-----------	--do---	Two times a year------	----do--------	Always waits in summer up to 3 hours. Has ceased to use the ferry because she couldn't get back into the car after it was parked. Once her small car was bumped to permit another car to board.
41. Edward C. Forster	Shelter Island Heights, N.Y.	--do---	Four or 5 times annually.	Pleasure and business.	Saves substantial mileage by using the ferry. Offered evidence from his diary which shows he had very short waits on some occasions and 3-hour waits on other occasions.
42. Loraine Terry----	Orient, N.Y-------	--do---	Not much recently----	--------------	Represents the North Fork Environmental Council and supports applicant in order to have improved transportation to protect the environment. Was not fully aware of the possible consequences of applicant's proposed service on the environment.

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Appendix

Applicant's public witnesses—Continued

Name	Location	Used	Frequency	Reason	Comments
43. Barbara Busch------	Kisset, N.Y----------	Yes----	Not in 1973-----------	Pleasure-----	Had to wait 3 3/4 hours for a boat because the fog forced cancellation of the boat at 9 a.m. Would like a reservation system.
44. Agnes McGunnigle--	Southold, N.Y--------	--do---	Five or 6 times annually.	----do-------	Had a friend unable to board because of a lack of passenger lifesaving facilities. On one occasion waited 6 or 7 hours because the first ferry was full and the rest were late.
45. Gilbert C. Hanse--	Babylon, N.Y---------	-------	---------------------	-------------	Testified as the Commissioner of Commerce and Industry of Suffolk County, N.Y. It encourages economic growth of industry and tourism. Suffolk is expanding economically, and many persons do business with persons in the New England States. Would increase tourist from New England. Also testified as to a proposed bridge between Oyster Bay and Rye, Wading River, and New Haven. Recently the bridge plan was abandoned.
46. Mrs. Walter Butterfield.	Southold, N.Y-------	Yes----	Four-6 times annually up to 1973.	Medical and pleasure.	Had to climb over cars. No provisions for handicapped people. No longer takes it during peak periods. Would like a reservation system. Does not wait, instead drives around.
47. George Faller-----	Huntington, N.Y------	------	---------------------	-------------	Represents the Long Island Builders Institute composed of members of the building trades in Nassau and Suffolk Counties. They believe transportation costs would be reduced by not having to go through New York City.
48. Will Rupprecht----	Mattituck, N.Y-------	Yes-----	Occasionally---------	Business-----	Cannot get on without a substantial wait (4 hours). Would save 125 miles each way if he could use the ferry. Makes the trip 3 times a month. Tried to use ferry 10 times, but got on only 3 times.
49. Ronald Busch------	Southold, N.Y--------	--do---	Once, September 1972--	Pleasure-----	Went over O.K. Had to wait 4 hours coming back on a weekend. Didn't feel safe.
50. Mrs. Helen C. Harrington.	Shelter Island Heights, N.Y.	--do---	Infrequently August and October 1973.	-------------	Too much vibration and unattractive vessel. No provisions for handicapped people.
51. Ange Panagopoulos-	East Marion, N.Y-----	--do---	Once -----------------	Pleasure-----	Was unable to get the last ferry. Went as a boat passenger once. Found conditions unsafe in his opinion as an experienced seaman.
52. Leonard Neil Axinn.	Northport, N.Y-------	No-----	---------------------	-------------	Represents Axinn and Sons Lumber Company which manufactures building supplies. It sells to customers in New England and delivers by its own vehicles, twice a week to New England. Does not use the ferry because of its erratic service, but would use a service providing reservations. Would increase the movements to New England to three times weekly.
53. Barbara Luce-----	Shelter Island Heights, N.Y.	Yes----	Once in 1969 and 1973 but did not get on other unspecified times	Pleasure and business.	In 1969 could not board last ferry after 4-hour wait nor first boat in morning then drove around. On October 10, 1973, could not get first boat out, although arrived at 7 a.m.
54. Arthur Tyrrell---	Orient, N.Y---------	--do---	Once in 1973---------	-------------	Arrived October 12, 1973, at 6:25 a.m. to catch 9 a.m. ferry, unable to board, left at 11 a.m. On return was late and weather was bad. Had two friends that drove around because of the long lines.

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Appendix

Applicant's public witnesses—Continued

Name	Location	Used	Frequency	Reason	Comments
55. Robert Dillingham	Aquebogue, N.Y.	Yes	Three-4 times	Pleasure	Arrived in July 1973, at 1 p.m. and was only on as standby for the 4 p.m. boat. Went over with a friend instead and had car brought over later. This happened in 1972 and 1973. Has seen as many as 25 cars turned away after he arrived. Anticipates service by applicant every hour.
56. Mary Wheeler	East Marion, N.Y.	--do--	Six-10 times annually	--do--	Finds the boat dirty and feels it is unsafe. Has observed cars being unable to board the ferry.
57. Lloyd Moore	Greenport, N.Y.	--do--	Twelve times, all prior to 1973.	--do--	Has been able to board only 7 out of 12 attempts. Used it first at Thanksgiving 1970. Vessel was canceled because of weather. Was able to get on immediately three or four times but had to wait on other occasions. Has observed cars left behind.
58. Gladys Csajko	--do--	------	------	------	Represents the Council of Allied Associations, an organization of 31 civic and property owner associations in Southold township. It supports applicant to get an improved service, but objects to the transport docking facilities because of the traffic congestion. No Greenport organizations belong to the Council.
59. Sele[illegible] Conti	Sag Harbor, N.Y., and Providence, R.I.	Yes	Once every 2 weeks	Pleasure	Had to wait 4 or 5 hours for a ferry. On Thanksgiving, 1973, he met his boss who had left 4 1/2 hours early still waiting to cross. He didn't wait, but drove around. Saves 200 miles by taking ferry.
60. Clinton Bernard	Sag Harbor, N.Y., and Greenfield, Mass.	--do--	Twice in 1973	--do--	Has used ferry only two times in 1973, because of the hassle of driving to New London and being unable to board and then driving around. Would save over 100 miles a trip by using the ferry. He makes a trip to New England once or twice every 2 weeks.
61. William Robin Fell.	Greenport, N.Y.	--do--	Once a week now, twice a week in the future.	Business	Operates as a trucker of exempt commodities. It is cheaper than driving around. No problem in winter, rest of time there is frequently a wait. Reservations would benefit witness.
62. Father James J. Barry.	Shelter Island, N.Y.	--do--	Infrequently in winter, often in summer.	To get to the retreat.	Works with teenage retreats at Shelter Island. Cars are packed so tight, people on occasion must exit through a car window. Had to wait 4 hours at times. Has had to drive around when the ferry was not running. Would like a reservation system.
63. Price H. Topping	Sagaponack, N.Y.	--do--	Two times a year	Pleasure	August 17, 1973, had wait of 3-4 hours. December 25, 1972, had a 2-hour wait. September 28, 1973, 4-hour wait going and 2 1/2-hour wait returning. Wants more service, not reservations. Saves 175 miles by not driving.
64. George Lascher	Hampton Bays, N.Y.	--do--	Three times in 1973	--do--	August 1973, had a 4-hour wait. Complained as to cleanliness of vessel.

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Appendix

Applicant's public witnesses—Continued

Name	Location	Used	Frequency	Reason	Comments
65. Robert Sturdy	Cohasset, Mass., and Cutchogue, N.Y.	Yes	Fifteen times annually	Pleasure	Used day of hearing, loading was delayed 10 minutes. Uses the ferry five or six times a year with his car, rest as passenger. Had no trouble at Thanksgiving, although boat grounded but then it had no trouble backing off and docking. Had a 4-hour wait on Labor Day. Bought a car in 1972 to leave at Orient Point to avoid the long wait. On Thanksgiving he was unable to board with his family because the capacity of the liferafts were not sufficient. After November 15, the Coast Guard requires liferafts rather than lifejackets for passengers. As a result he had to drive around. Has seen others left behind, and has waited as long as 4 1/2 hours.
66. John Beattie	Sag Harbor, N.Y.	--do--	Seldom	--do--	Used 6 or 7 years ago and since then has only picked up or delivered friends at the ferry. Drives around instead. Would like to see a bridge put in and supports applicant because there no longer are plans to put in a bridge.
67. John F. Mulhall	Southold, N.Y.	--do--	Six times a year personally, 2 times a week company truck.	Business	Represents Long Island Oyster Farms, Inc., which markets 5 percent of its production in New England. Occasionally trucks have to go around. This causes delays in unloading. A reservation system would alleviate this problem.
68. Mrs. Agnes Cross.	Shelter Island, N.Y.	--do--	Once in 1973	Pleasure	Would like year-round service. Has had friends drive around rather than wait. Believes boats are unsafe.
69. Peter J. Warren.	Laurel, N.Y.	--do--	Used to be twice a month on weekends but only 5 one-way trips in 1973.	Business and pleasure.	Could never get on the scheduled ferry he aimed at. Has waited through three ferries and at times has driven around. Coming back has made the ferry twice out of 21 tries. Saves 200 miles by using the ferry. Would use a reservation system.
70. Raymond Valcich	Montauk, N.Y.	--do--	Several times a year	Pleasure	Represents the Montauk Point Lions Club. Supports the application in the hope of increasing the number of tourists vacationing on Long Island. Personally operates two motels with 15 or 20 percent of his customers coming from New England. Has taken skiing trips to Vermont. Saves 175 miles by taking the ferry. There is a need for year-round ferry service.
71. Ormand Evers	Shelter Island, N.Y.	--do--	Has not used it since August 1972.	------	Last time he used it, first ferry was full and had to wait for the second. A reservation system would be useful.
72. Frank Maks	Riverhead, N.Y.	--do--	------	Business	Represents Lipco Adway, which receives seed potatoes and ships fresh potatoes between the middle of February through the end of October. Two hundred truckloads of seed potatoes. Has talked to truckers and they said service was too irregular with 2- or 3-hour waits.

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Appendix

Applicant's public witness—Continued

Name	Location	Used	Frequency	Reason	Comments
73. Bob Goldstein--	Mattituck, N.Y------	Yes----	Personally once every 6 weeks	Business------	Represents Agway Corporation which ships fertilizer. Little moves to points in New England. It operates its own equipment via the ferry to New England. He uses it on business, must arrive early, but usually gets first boat. Saves 200 miles by using the ferry. A reservation service would be a big help. Winter weekend service would be of no benefit.
74. Walter C. Barber	North Haven Shores, N.Y	--do---	Two trips in 1973----	Pleasure------	On September 21, 1973, other cars were loaded ahead of witness, although he got on. October 26, 1973, water was rough and witness felt ill. Saves 170 miles by not driving, only 30 miles by ferry. Would like to make reservations.
75. Jane Smyle------	North Haven, N.Y-----	--do---	Not since Christmas 1972.	----do--------	On occasion had to wait for the second or third boat, then had to crawl out the window to get on deck. Has driven out to the dock and could not get on. So drove around. Witness also offered a letter written by her mother describing her experiences in using the ferry.
76. Ralph Smyle-----	------do--------------	--do---	------do--------------	----do--------	Husband of Jane Smyle. Has driven around when unable to get on. Similar to his wife's testimony.
77. Adolph Westerland	Peconic, N.Y---------	--do---	Ten to 15 years ago 2-6 times a week for business. Now occasionally for pleasure.	Business and pleasure.	Formerly a truck driver for Steve W. Stepnowski, transporting produce. Had to wait, then sometimes trip was canceled and had to go around. December 8, 1973, drove down to ferry and found out it was canceled, so had to go around. One hundred and seventy miles more than by ferry.
78. Virginia Whitman	Shelter Island, N.Y.	--do---	Five trips between August through November 1973.	Pleasure------	Observed on November 11, 1973, a Mercedes Benz given special treatment by being put ahead of other cars which were waiting. A reservation service would be good as it would save the witness time.
79. Doctor James Johnson	Southampton, N.Y.	--do---	Five or 6 times in 12 years.	----do--------	Long waits of up to 4 hours for a ferry. One time a boat came in, but no one was allowed to load. The vessel had broken down, but those waiting were not told for one-half hour. Another time he rented a car, so his family could go as passengers. Offered letters he had written his representative. Would like a reservation system.

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Appendix

Applicant's public witnesses—Continued

Name	Location	Used	Frequency	Reason	Comments
80. George E. Young----	Mattituck, N.Y-------	Yes-----	--------------------	Pleasure------	On October 11, 1973, waited in car on vessel and could not get out because of closely parked cars. Has waited 1 1/2 to 2 hours. Once he left because he would have to wait, and stayed overnight at a relative's and got on in the morning. October 5, 1973, had to wait 2 1/2 hours.
81. Natalie Young------	------do-------------	--do----	Five times----------	-----do--------	Wife of George Young. Waits were closer to 3 1/2 hours. Saw oil on the deck from a valve left open. Made her nervous. No supervision of children by NLFL's employees.
82. Thomson Murray II-	New York, N.Y--------	--do----	--------------------	--------------	Has a summer home in Southampton, N.Y. Drove down to get the ferry, but the line was so long he did not stop.
83. Thomas L. Jernick--	Shelter Island, N.Y--	--do----	--------------------	Business-------	Supervisor of the town of Shelter Island. Offered a general resolution of the town board in support of the application. In addition, witness is an agent for National Van Lines, which moves household goods to points in New England. At times the driver has been unable to take the ferry and because of restrictions on driving time has had to lay over. Has used the ferry without problems in spring and fall. A service operating in winter only on weekends would not help.
84. Malcolm Newbourne--	Farmingdale, N.Y----	-------	----------------	--------------	Owns Hamilton Motor Lines which runs between all Long Island points, and points in New York. It operates 20 tractors, 51 trailers, and 10 straight trucks. It interlines with New England carriers. It would attempt to have the connecting point changed if the application were granted. Serves Long Island twice a week in summer, once a week in winter, but with a reliable service it would be three to five times a week.
85. John Lucas---------	East Quogue, N.Y-----	Yes-----	Once a month---------	Pleasure-------	On July 16, 1973, had to wait 3 1/2 hours to board then the muffler came off when getting off the vessel. He filled out a report. He sent a bill for the temporary repair and one for the full repair which he did himself. Protestant did not reply. He stated his daughter and her husband had to go around because of the long wait.
86. Paul Lucas---------	------do-------------	--do----	------do-------------	-----do--------	Son of John Lucas. Was unable to board once because although only seven cars were taken a busload of people filled up the available passenger space permitted by the Coast Guard. On another occasion he got his car and five trucks and a Volkswagon on the vessel, but cars were left. On December 6, 1973, he arrived and was told there would be a 45-minute wait, but doubted this and, therefore, drove around. A reservation system would help.

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Appendix

Applicant's public witnesses—Continued

Name	Location	Used	Frequency	Reason	Comments
87. Theresa Celic	Aquebogue, N.Y.	Yes	Six-eight times in 1973.	Pleasure and business.	Did not like the sound or look of the ferry. On Labor Day weekend she slept in the car to be assured of a place on the ferry in the morning. Believes a reservation system would be helpful. Also submitted a letter from Mercy High School indicating support for applicant as a safer ferry service. Has had to wait 4 hours in summer on weekends.
88. Jim Hubbard	Greenport, N.Y.	--do--		Pleasure	Testified as to the efforts of Greenport to get better ferry service. The board of trustees approved of the plan by applicant. When he uses the ferry he parks his car in line and goes home, then returns in time to board. A reservation system would benefit him.
89. John Ernest	Mattituck, N.Y.	--do--	Thirty times a week during the potato season.	Business	Manager of Fargo Potato Company, which buys and sells potatoes in New England. The company hires the trucks. They use the ferry. Sometimes they cannot get on and have to go around which takes much longer. Not using the ferry is inconvenient because deliveries must be timely.
90. Raymond Wesnofske.	Bridgehampton, N.Y.	--do--	Twice a day in season	---do---	A potato grower and shipper. He ships to points in New England by truck. Using the ferry causes delays in waiting for vessel space. If he cannot board until late he misses the market. Then an entire trip is lost. Uses Lowell Topping, Wayne Giddie, and Winston Ward to move his potatoes.
91. William Otto	Coram, N.Y.				Represents the Nassau County Department of Transportation which indicates a need for an improved service.
92. Nicholas Montemarano.	Montauk, N.Y.				Operates a resort hotel and conference center with 125 rooms. between November and February, 75 percent of his business is derived from conferences. Better transportation would benefit witnesses' business. States there have been times when guests had to wait for a ferry or had to drive around.
93. William Grover	Riverhead, N.Y.	Yes		Business	Sales manager of Agway, Inc., in charge of marketing fresh produce at points in New England from Long Island. The products are moved by truck. Late deliveries result in loss of money. It has potatoes moving from August through October, 10 movements a day, with a total of 100 movements moving to points in New England. Does not control the routing of truckers hired.
94. Charles C. Frazee	Mattatuck, N.Y.	--do--	Two or three times a year.	Pleasure	On December 4, 1973, had to drive around because no more boats were running. Had to wait from 7 a.m. until 4 p.m. to get a boat on August 3, 1973. A reservation system would help. Believes the service has deteriorated over the last 5 years.

No. W-1270
Appendix

Applicant's public witnesses—Continued

Name	Location	Used	Frequency	Reason	Comments
95. Joseph Behan	Montauk, N.Y.				Operates a party fishing boat year round. Customers have complained about the long wait for a ferry. Fifteen percent of his customers come from New England. Believes the reservation system would benefit his business.
96. Stanley Poole	East Marion, N.Y.	No			Has observed people waiting for the ferry; some sit in their cars and run the air conditioners; others set up their camping gear.
97. George W. Wetmore	Greenport, N.Y.	Yes	Not since 1961		He is in the real estate business and believes the present ferry service hurts his business.
98. Thomas F. Higgins	Massapequa, N.Y.	--do--	Once or twice a week	Business	Sells firetrucks and rescue equipment. Drives car down at night, then has wife drive him down in the morning to get boat. Coming back has employees of protestant bring car over when they can and he goes as a foot passenger. Repairmen are ordered to drive around and customers pay for this time. About 12 times a year the servicemen cannot get a ferry and will not drive around so customers have to pay for an overnight stay. Saves 2 hours of driving time to use the ferry. A reservation system would be a benefit to his business.
99. James R. Douglas	Orient, N.Y.	--do--	Uses the ferry four times a week.	---do---	Operates with his father, Robert Douglas, Orient Trucking and Construction Company, which operates three tractor-trailer units. Transports seafood to points in New England. Has had to wait up to 6 hours for service. Does not believe one of protestants vessels is safe for a tractor-trailer, and the other two are too small. Had trouble getting out of the cab. Had to drive around because of the long wait. Would like a reservation system.
100. Hugh Halsey	South Hampton, N.Y.	--do--	Two or three times a year.	Pleasure	Had to wait 2 1/2 hours on Sunday, October 21, 1973. Had to drive around the next day because he could not get on the last ferry. Would like a reservation system.
101. Robert Douglas	Orient, N.Y.	--do--		Business	Father of James R. Douglas. Witness deals with heavy construction machinery. Operates seven dump trucks and three flat-bed tractor-trailer units. Could not use the ferry on one occasion so had to drive around. Would have saved 400 miles by using the ferry. If he could reliably use the ferry would pick up materials in New England and thereby save time and expense.

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Appendix

Unsponsored public witnesses

Name	Location	Used	Frequency	Reason	Comments
1. Robert L. Thomas	Manhasset, N.Y.	--------	--------------------	--------------	Represents the Mid-Suffolk Crossing Task Force which is composed of 150 business organizations. Because of the end of the proposal to build a bridge the organization is now more interested in the ferry service. The organization supports fast, frequent, and foolproof ferry service as a necessity of sound economic growth in this region. To that end it urges that existing facilities be upgraded and new vessels acquired with an hourly schedule. Stated the prospect of a bridge was real issue until June 1973.
2. Thomas Jurzenia	Greenport, N.Y.	--------	--------------------	--------------	Is concerned with the extra traffic unloading at applicant's dock in Greenport adding to the existing congestion.
3. Edgar Marvin	Southold, N.Y.	--------	--------------------	--------------	Is concerned with all factors, including life style of the Greenport people and the effect of additional vehicles on the pollution. He objects to any ferry service in Greenport.
4. Nancy Graham	Greenport, N.Y.	--------	--------------------	--------------	Sails during summer and has observed others sailing and fears the intrusion of a large ferry would create a traffic hazard. Says that sailing boats might go elsewhere and the city merchants would lose money.
5. Ray Watson	------do------	--------	--------------------	--------------	Objects to the location of the ferry because of the traffic problem and believes she would lose tourist business because of the ferry.
6. Arthur Levine	------do------	--------	--------------------	--------------	Opposes the location of the ferry in Greenport because such a service would damage the Greenport businesses.
7. Lorraine Terry	Orient, N.Y.	--------	--------------------	--------------	As an individual is concerned about the location of the proposed ferry. Had testified earlier as the representative of the North Fork Environmental Council.

Protestant's public witnesses

Name	Location	Used	Frequency	Reason	Comments
1. Michael B. Giordano.	New London, Conn.	No------	--------------------	--------------	Operates a concession stand across from protestant's landing in New London. He also rents parking space for foot passengers on the ferry. He fears losing some business if the application is granted.
2. Reverend Thomas C. Truscott.	Westhampton Beach, N.Y.	Yes------	Four or five times annually.	--------------	Is aware of delays during peak periods but is able to schedule his trips for other times. Is concerned with the use of a large boat in Greenport. Has always been able to take his auto on the ferry, never waiting more than 2 hours.
3. Robert B. Baird	Quogue, N.Y.	--do----	One to four times a month.	--------------	Has had to wait. Waits for 1 hour. Has observed cars left behind. Has found the service comfortable and employees courteous.
4. Arthur Charles Lorenzo.	Coram, N.Y.	--do----	Fifteen-20 times annually for the company, 3 times personally.	Business------	Represents Lyon, Inc., which has 11 affiliates engaged in various businesses. They have used the ferry service. Personally has not had any major delays.

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Appendix

Protestant's public witnesses—Continued

Name	Location	Used	Frequency	Reason	Comments
5. Henry J. Rendick	Babylon, N.Y.	Yes------	Four times annually	Pleasure------	Is a relative of the owners of protestant New London. Has never seen anyone receive preferential treatment. Waited only 1 hour on November 9, 1973, with ferry not full. On Sunday, November 11, was timely for next boat. Although he boarded ahead of others, was not given special treatment. Was only placed in a spot suitable for his car.
6. Morris Segal	Riverhead, N.Y.	--do----	Forty-50 times annually.	Business------	Represents Segal Bag Co. which is the distributor of bags for produce and grocery and corrugated containers throughout New England. It has three tractor-trailer units and three trucks. Finds service generally satisfactory. Traffic moves all year round. Drivers have waited for a couple of hours. Had to drive around three or four times a year.
7. Herbert Faust	Middle Island, N.Y.	--do----	Two-five times a year	--------------	Was in charge of transportation for a school district 2 years ago. Field and athletic trips were taken to New England on occasion. Had no difficulty with the ferry. Personally had to wait for next boat, but basically satisfied with the service.
8. Edith H. Wilson	Quogue, N.Y.	--do----	Three or four times a year.	Pleasure------	Has found the service quite adequate by planning to avoid the peak crowds. Once the boat returned to pick her up, which she indicated was nice. She states the crews have always been courteous and the boats clean and seaworthy. Has waited generally not more than an hour for a boat, except once for 2 hours.
9. Thomas Conoscenti	Nesconset, N.Y.	--------	--------------------	--------------	Prepared an economic study on the feasibility of two ferry lines operating between New London and Long Island. He concluded that such operations were not feasible. Certain questions were raised as to the accuracy of the base used in the analysis.
10. Ralph L. Otis	Quogue, N.Y.	Yes------	--------------------	--------------	Found the service satisfactory and does not believe there is a need for additional service.
11. Dr. Douglas H. Smith.	--------------------	--------	--------------------	--------------	Opposes the operation of applicant into the Greenport harbor because of its crowded nature. In addition the added traffic would be bad for downtown Greenport. He also feels applicant is not financially fit.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D.C., on the 3d day of November 1976.

No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC. INITIAL OPERATIONS—NEW LONDON TO GREENPORT, L.I., NEW YORK

Investigation of the matters and things involved in this proceeding having been made, and the Commission, Division 1, on the date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That Cross-Sound Ferry Services, Inc., be, and it is hereby, substituted as protestant in lieu of New London Freight Lines, Inc., with the right to participate in all further proceedings herein.

It is further ordered, That the joint petition of protestants, Bridgeport & Port Jefferson Steamboat Co., and Cross-Sound Ferry Services, Inc., filed November 21, 1975, (a) for reconsideration and (b) to reopen for receipt of additional evidence, except to the extent granted in said report, be, and it is hereby, denied.

It is further ordered, That said application, except to the extent granted in said report, be, and it is hereby, denied.

It is further ordered, That unless compliance is made by applicant with the requirements of sections 306 and 315(a) of the Interstate Commerce Act within 90 days after the date of service hereof, or within such additional time as may be authorized by the Commission, the grant of authority made in said report shall be considered as null and void and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

By the Commission, Division 1.

ROBERT L. OSWALD.
Secretary.

(SEAL)

DOCUMENT 331

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.,

INITIAL OPERATIONS - NEW LONDON TO GREENPORT, L. I., NEW YORK

PETITION FOR RECONSIDERATION AND TO REOPEN FOR RECEIPT OF ADDITIONAL EVIDENCE

SHELTER ISLAND AND
GREENPORT FERRY COMPANY, IN

Robert W. Tasker
Its Attorney

Dated: December 15, 1976

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.,

INITIAL OPERATIONS - NEW LONDON TO GREENPORT, L.I., NEW YORK

PETITION FOR RECONSIDERATION AND TO REOPEN FOR RECEIPT OF ADDITIONAL EVIDENCE

Come now Shelter Island and Greenport Ferry Company, Inc. (SIGF) an intervenor in the above captioned proceeding, and submits its petition for Reconsideration of the decision of the Commission, division 1, served November 19, 1976, and for reopening of this proceeding for the receipt of additional evidence. In support of its petition, SIGF states as follows:

PREFACE

1. The Commission committed procedural error in that it permitted applicant to introduce further evidence after the record was closed but denied such right to others.

2. The Commission erred in finding that the applicant is fit, willing and able to provide the service applied for.

PETITION

At the outset it should be stated that SIGF intervened in this proceeding in December, 1973 solely to object to the location and docking plan of Mascony in the vicinity of its own Ferry Terminal. It did not participate in the hearing held in this matter other than to present evidence on the location of Mascony's proposed terminal and the adverse effects thereof on the SIGF ferry operations.

It should also be pointed out that the writer is not a regular practicioner before the ICC and accordingly not familiar with its procedures.

SIGF was aware of the fact that this proceeding was opposed by Cross-Sound Ferry Services, Inc.; that East End Supply Co., Inc.; the Village of Greenport Planning Board; the New York State Department of Transportation and the Connecticut Department of Transportation had intervened herein in opposition to the granting of the application, and that the initial decision had denied the application of Mascony on June 10, 1974. For these reasons, SIGF concluded (erroneously as it now appears) that the likelihood of Mascony's application being approved was remote, and accordingly did not actively participate in the proceedings for the last two years.

I.

PROCEDURAL ERRORS

The Mascony Application was filed on May 29, 1973. Hearings were held during a period from October 29, 1973 until February 20, 1974 and the record closed as of March 19, 1974, almost thirty-three months ago. During this period of time many changed circumstances have occurred.

From the date of the Mascony application to date, the location of Mascony's docking facilities, staging areas and traffic routes to and from such areas has constantly been changed, and apparently even at this late date, a location at the Long Island Railroad facility is being considered. All of these changes could vitally effect SIGF particularly with respect to the operation of its ferries; its staging areas; traffic routes and the transportation of emergency vehicles.

Since the hearings held at Greenport in 1973 the SIGF operations have changed. A fourth ferryboat is under construction and will be placed in service in the Spring of 1977. The number of vehicles now carried by SIGF annually exceeds 250,000 and the number of passengers exceeds 320,000. The traffic route and staging area of SIGF has been changed. In order to eliminate the use of Wiggins Street as a staging area, ferry traffic now proceeds south on Third Street from Front Street to a new staging area at the Long Island Railroad freight yard. Any additional use of Third Street by Mascony ferry traffic would cause severe traffic congestion on Third Street and of course would aggravate the traffic conditions at the traffic light at the intersection of Third and Front Streets. If Mascony were to use the Long Island Railroad property for its staging area, as well as landing its vessels at such property, additional safety and traffic dangers would be created.

If in fact Mascony proposes to use the Long Island Railroad property for its ferry services, and since Mascony has throughout these proceedings been permitted to change its location and plan of operation at will, it would only seem equitable that these proceedings be reopened; that Mascony be required to submit a specific plan with respect to such new location and that the protestants and all intervenors be given an opportunity to cross-examine on and to submit evidence with respect thereto.

II.

APPLICANT HAS FAILED TO PROVE IT IS FIT, WILLING AND ABLE TO PROVIDE THE SERVICE APPLIED FOR.

As pointed out in the dissenting opinion of Commissioner Murphy, the applicant has the burden of proving that it is fit, willing and able to provide the service applied for. It would seem that at the very least, the the applicant must present a feasible plan of operations. The applicant has failed to sustain this burden of proof. For all practical purposes no workable plan in fact exists. Applicant's so-called original plan to use the Mitchell property has changed at least twice, and the legality of its use of the property at all is presently in litigation, nor has it applied for or obtained approval of any of its plans from the Village Planning Board.

If Mascony now proposes to use the Long Island Railroad property, it has not as yet obtained legal authority to do so, nor has it obtained the required permits for dredging and bulkheading. In fact, the Zoning Ordinance of the Village of Greenport does not even permit the Long Island Railroad property lying south of its tracks to be used for ferry terminal purposes.

The record in this proceeding cannot support a finding of fitness of the applicant by the Commission.

At the time that SIGF participated in the oral hearings at Greenport more than three years ago, only the first of Mascony's plans existed. In the intervening three years this plan has constantly changed, and now it appears that perhaps an entirely new plan at a new location may emerge. Since Mascony has been permitted to change its plans at will whenever a previous plan was shown to be unworkable, simple justice would dictate that Mascony be required to submit one complete, specific plan and protestants and all intervenors be afforded an opportunity to examine witnesses and present evidence with respect thereto.

WHEREFORE, for all the reasons set forth herein SIGF respectfully prays that the Commission reconsider its decision and order herein dated November 3, 1976 and after such reconsideration deny the application of Mascony to operate a ferry service between Greenport, Long Island, New York and New London, Connecticut, or in the alternative reopen the proceedings for further hearings in order that intervenors and protestants might have an opportunity to introduce evidence reflecting changed circumstances in order that the Commission might have before it up-dated information on which to prepare its decision.

Respectfully submitted,

SHELTER ISLAND AND GREENPORT
FERRY COMPANY, INC.

by______________________________
Robert W. Tasker
Its Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all parties of record by first-class mail, postage-prepaid, this 15th day of December, 1976.

Robert W. Tasker

DOCUMENT 337

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.

- INITIAL OPERATIONS -

NEW LONDON TO GREENPORT, L.I., NEW YORK

PETITION FOR RECONSIDERATION

HARRY J. MITCHELL AND
PAULINE MITCHELL

By Richard E. DePetris
220 Roanoke Avenue
P. O. Box 599
Riverhead, New York 11901

Their Attorney

Of Counsel:

SCHEINBERG, WOLF, LAPHAM,
DEPETRIS & PRUZANSKY
220 Roanoke Avenue
P. O. Box 599
Riverhead, New York 11901

Dated: December 17, 1976

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.

- INITIAL OPERATIONS -

NEW LONDON TO GREENPORT, L.I., NEW YORK

PETITION FOR RECONSIDERATION

Come now Harry J. Mitchell and Pauline Mitchell (hereinafter "petitioners") and submit this petition for reconsideration of the decision of Division 1 served in the above-captioned proceeding on November 19, 1976.

I

As the basis for their petition, petitioners submit that the majority opinion of the Division is in error in its assumption that the so-called Mitchell property will be available to applicant, Mascony Transport and Ferry Service, Inc. ("Mascony") as its terminal location in Greenport, New York.

II

By its application Mascony seeks to establish a commercial ferry operation between New London, Connecticut, and Greenport New York. It proposes to use as its terminal and docking site at Greenport, a parcel of property which is now owned by petitioners. Mascony claims that the proposed terminal and docking site is available to it under certain leases between Mascony and Advine Realty Corp. Advine was the owner of the property at the time Mascony filed its application and at the time the alleged leases were made. However, petitioners held a mortgage on the property at such time, and petitioners are now the owners of the property, as a result of foreclosure of such mortgage against Advine after default by Advine. Petitioners became the owners at the foreclosure sale in January of 1976.

Petitioners believe that the alleged leases are invalid and of no further force or effect as against petitioners and their property. Earlier this year, petitioners commenced an action in the Supreme Court of the State of New York, County of Suffolk, against Mascony and Advine for a judgment declaring that the alleged leases are invalid and of no further force or effect as against petitioners and their property. Such action is now pending in such Court, and if petitioners are successful in such action, the proposed terminal and docking site will never be available to Mascony. Petitioners are presently in possession of the property, and petitioners will not permit Mascony to use the property during the pendency of such action.

Mascony contends that its interest in the proposed terminal and docking site is based upon alleged leases from Advine. One alleged lease is for a relatively narrow strip of land running from Front Street to the pier, immediately East of the Post Office building, which strip is proposed by Mascony to be utilized as an entrance. In 1974, petitioners did agree to subordinate their mortgage to a certain lease for this relatively narrow strip of land. Another alleged lease is for a right-of-way running behind the restaurant building and then out to Front Street at a point opposite First Street, which right-of-way is proposed by Mascony to be utilized as an exit. Petitioners never agreed to subordinate their mortgage to any such lease or right-of-way, and thus it seems clear that the land proposed to be utilized by Mascony for the exit is not available to Mascony. In the absence of a suitable exit, Mascony's application could not be granted.

The pending action brought by petitioners seeks a judgment declaring that all the alleged leases between Advine and Mascony are invalid and of no further force or effect, on various legal grounds, including fraudulent acts and conduct on the part of

Advine and Mascony. In view of the pendency of serious allegations of fraud, it seems particularly inappropriate for the Commission to render a determination that the applicant is fit to perform the service and that it is feasible for the applicant to do so.

Petitioners are concerned that the Commission's action, which appears to implicitly recognize some interest of Mascony in their property could have an adverse impact on such litigation. Equally serious is the fact that, regardless of the outcome of the litigation, the Commission's action, standing alone, could be construed as casting some doubt on the status of petitioners' property. It is for this reason that petitioners seek an opportunity to present evidence to the Commission which will conclusively demonstrate that Mascony has no remaining interest in petitioners' property and which could serve as a basis for a decision by the Commission on reconsideration recognizing that applicant has not shown itself to have any legal interest in the property.

As petitioners understand the requirements of the Interstate Commerce Act an applicant for operating authority from the Commission must, as an essential prerequisite to issuance of operating authority, prove that it possesses the capability to provide the proposed service. Since availability of a terminal site is an essential precondition to the operational feasibility of Mascony's proposal petitioners believe that consideration of the evidence that they would submit if given the opportunity to do so would foreclose a finding that applicant has sustained its statutorily imposed burden of proof. That being the case the application would have to be denied and all question as to the status of petitioners' property would be removed.

II.

Petitioners also object to the majority decision of Division 1 in that it would authorize an environmentally harmful operation without adequate notice to interested parties. Although petitioners became aware of applicant's proposal to a limited extent in 1974, it was not until after the environmental investigation was conducted by the Commission that petitioners became aware of the full ramifications of the proposal and its potentially devastating impact in the environment of Greenport. Such consequences would include serious safety problems in the crowded harbor of Greenport which is a mecca for small boat enthusiasts. It would also aggravate an already badly congested traffic situation in downtown Greenport.

As a matter of fundamental fairness petitioners submit that they must have an opportunity to submit evidence on these consequences now that they have been disclosed by virtue of the Commission's environmental investigation.

IV

CONCLUSION

By its decision of November 19, 1976, the majority of Division 1 would take action which would seriously injure petitioners by casting a serious cloud upon petitioners' rights in and to their property. It would also authorize Mascony to engage in a proposed operation whose seriously negative environmental consequences were made fully apparent only after completion of the procedures required by the National Environmental Policy Act of 1969. The impropriety of such a situation is readily apparent when consideration is given to the fact that such procedures were employed only after the record in this proceeding was closed and petitioners no longer had any opportunity for meaningful participation.

In view of all of the foregoing considerations petitioners request the entry of an order denying the application without prejudice to the filing of a new application which could be evaluated by the Commission in the light of current circumstances or, alternatively, reopening of the record herein so that the Commission can reconsider the action of Division 1 on the basis of current evidence.

Respectfully submitted,

HARRY J. MITCHELL AND
PAULINE MITCHELL

By Richard E. DePetris
Richard E. DePetris
220 Roanoke Avenue
P.O. Box 599
Riverhead, New York 11901
Their Attorney

Of Counsel:

SCHEINBERG, WOLF, LAPHAM,
DEPETRIS & PRUZANSKY
220 Roanoke Avenue
P. O. Box 599
Riverhead, New York 11901

Dated: December 17, 1976

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon counsel for all parties of record, via first-class mail, postage prepaid, this 17 day of December 1976.

Richard E. DePetris

Richard E. DePetris

DOCUMENT 339

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.
- INITIAL OPERATIONS -
NEW LONDON TO GREENPORT, L.I., NEW YORK

PETITION FOR RECONSIDERATION

BRIDGEPORT & PORT JEFFERSON
STEAMBOAT COMPANY

Gordon P. MacDougall
Suite 907
1100 17th Street, N.W.
Washington, D.C. 20036

Date: December 20, 1976

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICE, INC.

- INITIAL OPERATIONS -

NEW LONDON TO GREENPORT, L.I., NEW YORK

PETITION FOR RECONSIDERATION

Comes now Bridgeport and Port Jefferson Steamboat Company ("B&PS"), a protestant herein and submits this petition for reconsideration of the decision of Division 1 served in the above-captioned proceeding on November 19, 1976.

I

PRELIMINARY STATEMENT

B&PS filed a timely protest herein and has participated actively at every stage of proceedings including presentation of testimony at oral hearing. B&PS submits that the majority opinion of Division 1 to which this petition is directed is patently erroneous and asks that if be set aside. More particularly B&PS submits that the majority opinion is defective in the following specific features:

1. The majority committed error in summarily dismissing the interests of B&PS on the grounds that its operations are not competitive with those proposed by Mascony.
2. The majority committed error in acting contrary to the requirements of the National Environmental Policy Act of 1969 ("NEPA") and the Commission's regulations implementing NEPA.
3. The majority committed error by considering late filed evidence of applicant while refusing to receive or consider responsive evidence from protestants.

II

ARGUMENT

1. The majority committed error in summarily dismissing the interests of B&PS on the grounds that its operations are not competitive with those proposed by Mascony.

As the record in the proceeding indicates, B&PS has provided ferry service between Bridgeport, Connecticut and Port Jefferson, New York for many years. Due to the cyclical nature of its traffic coupled with the steadily rising cost of operation, B&PS is only marginally profitable. It can ill afford to have any of its traffic diverted.

B&PS's terminal points are somewhat removed from those of Cross-Sound Ferry Services, Inc. ("Cross-Sound") and those proposed by Mascony Transport & Ferry Service, Inc. ("Mascony"). However, both B&PS and Cross-Sound provide the same basic service to the public i.e. ferry service across Long Island Sound between the south shore of Connecticut and the north shore of Long Island. They serve broad markets which largely overlap. For example, reference to any map will reveal that a person travelling between New York City and Boston could just as easily use either service and his choice would depend largely on whether he wanted most of the land portion of his journey to take place in Connecticut or on Long Island. The same observation could be made with respect to any one of a number of pair cities. Several of the witnesses who testified in this proceeding indicated that they view the services of B&PS and Cross-Sound (then New London Freight Lines, Inc. ["NLFL"]) as alternative services available to travelers moving between most points in New England, on the one hand, and, on the other, most points on Long Island or south or west of Long Island. The study of the Connecticut Department of Transportation that is referred to in the majority decision also reflects the same relationship between the two services.

Because of the terminal sites that it has chosen the the relationship of the proposed Mascony service to the existing service of B&PS would be approximately the same as the present relationship between the existing services of B&PS and Cross-Sound. In fact, on the Long Island side the Mascony terminal at Greenport would be closer than the Cross-Sound terminal at Orient Point to B&PS's Port Jefferson terminal.

All of the foregoing facts of record clearly indicate, as Commissioner Murphy points out in his dissent, that the proposed service of Mascony would indeed be competitive with and have an impact upon the services of B&PS. The majority's failure to acknowledge this fact constitutes a clear and substantial defect in its decision.

2. The majority committed error in acting contrary to the requirements of NEPA and the Commission's requirements of NEPA and the Commission's regulations implementing NEPA.

Central to the underlying purpose of NEPA is the intention that adverse environmental effects of agency actions will be given consideration at a point in agency proceedings that insures meaningful participation by all interested parties in the development of competent evidence relating to such effects. This is clear from the legislative history and the language of the statute and from the cases that have construed its requirements. See, for example, Harlem Valley Transportation Association v. Stafford, 500 F.2d 328 (2nd Cir 1974) and Greene County Planning Board v. Federal Power Commission, 455 F.2d 412 (2nd Cir 1972). Even the Commission's own recent decision in Ex Parte No. 55 (Sub No. 4), Revised Guidelines for the Implementation of NEPA, 352 ICC 451 (1976) make it clear that in an adjudicatory proceeding such as the instant proceeding all parties must be given an opportunity to submit evidence relating to environmental issues at a meaningful stage in such proceeding.

In its Revised Guidelines the Commission has adapted a requirement that environmental impact statements be completed and issued at least 15 days before oral hearing in order to allow the parties an opportunity to test and evaluate the facts and conclusions contained in the impact statements by means of cross-examination and submission of rebuttal evidence. The requirements set forth in the Revised Guidelines were not in effect during the period in which the draft and final environmental impact statements were prepared. However, since the Revised Guidelines represent an identification and codification of the basic requirements of meaningful fulfillment of the statutory objectives of NEPA it is clear that such requirements should be made applicable to this proceeding now that they have been identified. This could easily have been done by reopening the record for further hearings even if such further hearings had been limited to matters covered in the environmental impact statement. The Division's failure to do so constitutes serious and reversible error.

3. The majority committed error by considering late filed evidence of applicant while refusing to receive or consider responsive evidence from protestants.

By its order served October 22, 1975 the Division, acting on the erroneous assumption that this proceeding was uncontested, reopened the record to receive certain supplemental evidence tendered by applicant in an effort to cure certain defects in its case which had been noted by Judge Allard in his Initial Decision. B&PS filed a timely petition for reconsideration of that order pointing out that the proceeding was indeed very much contested and requesting that the Division reject the supplemental material of applicant. At the same time B&PS joined in a petition asking that the record be reopened to give protestants the same opportunity that had been given to applicant to submit additional evidence. These requests of B&PS were responded to for the first time in the Decision served November 19, 1976.

In its decision of November 19, 1976 the Division retreated from its unqualified receipt of applicant's supplemental material and stated that such material would " . . . be considered only insofar as such matters may be encompassed in the final environmental impact statement". Since the environmental impact of applicant's proposal is the pivotal issue in this proceeding and since virtually all of the supplemental materials submitted by applicant relate in some way to that issue the disclaimer of the majority is meaningless. Contrary to the majority's assertion protestants have indeed been

" . . . deprived of any opportunity to rebut evidence tendered by applicant after the close of oral hearings." As Commissioner Murphy has noted in his dissent such deprivation constitutes a fundamental denial of due process that cannot be sustained.

III

CONCLUSION AND PRAYER

As the majority recognizes in its opinion, this case is "unusual" in many respects. Foremost among its unusual features is one which the majority has not recognized but which is nonetheless present. In its efforts to bring this proceeding to an end the majority has denied protestants fundamental procedural rights, particularly with respect to the development of the record as it relates to the environmental impact of applicants' proposal. Because of this fatal flaw the majority decision, unless set aside on reconsideration, can only result in further delay in bringing about an equitable termination of this proceeding.

WHEREFORE, For all of the foregoing reasons, protestant B&PS respectfully prays that an order be entered setting aside the majority opinion and denying the application in its entirety.

Respectfully submitted,

BRIDGEPORT & PORT JEFFERSON
STEAMBOAT COMPANY

By______________________________
Gordon P. MacDougall

Its Attorney

Date: December 20, 1976

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all parties of record, by first-class mail, postage prepaid, this 20th day of December, 1976.

Gordon P. MacDougall

DOCUMENT 345

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICES, INC.

- INITIAL OPERATIONS -

NEW LONDON TO GREENPORT, L.I., NEW YORK

PETITION FOR RECONSIDERATION

CROSS-SOUND FERRY SERVICES, INC.

By Peter A. Greene

Its Attorney

Of Counsel:

MACLEAY, LYNCH, BERNHARD & GREGG
1625 K Street, N.W.
Washington, D.C. 20006

Dated: December 20, 1976

Before the

INTERSTATE COMMERCE COMMISSION

Docket No. W-1270

MASCONY TRANSPORT AND FERRY SERVICES, INC.

- INITIAL OPERATIONS -

NEW LONDON TO GREENPORT, L.I., NEW YORK

PETITION FOR RECONSIDERATION

Comes now Cross-Sound Ferry Services, Inc., P. O. Box 33, New London, Connecticut, (hereinafter "Cross-Sound") protestant herein, and submits this petition for reconsideration of the decision of Division 1 served in the above-captioned proceeding on November 19, 1976.

I

PRELIMINARY STATEMENT

By application filed May 29, 1973, Mascony Transport and Ferry Services, Inc. ("Mascony") sought authority from the Commission:

> to engage in operation, in interstate or foreign commerce, as a common carrier by water in the transportation of general commodities and passengers by self-

> propelled vessels, between the ports of
> New London, Conn., and Greenport, Long
> Island, N.Y.;

Protests were duly filed by several parties including New London Freight Lines, Inc. ("NLFL"), the predecessor in interest to Cross-Sound.

Extensive hearings were held in which NLFL actively participated. Briefs were filed by various parties including NLFL and, on June 19, 1974, an initial decision denying the application was issued by Judge Allard, the administrative law judge who presided over the reception of evidence. On August 19, 1975, Mascony filed exceptions to Judge Allard's decision and petitioned the Commission to reopen the record for receipt of additional evidence intended to correct basic omissions in its case. Responses were filed to applicant's exceptions and petition on September 30, 1974. From that date until October 22, 1975, the Commission took no action in connection with this case.

While this proceeding was pending on exceptions the Commission, in Finance Docket No. 27846, authorized transfer to Cross-Sound of that portion of the operating authority whereby NLFL was authorized to provide service between New London, Conn. and Orient Point, N.Y. That transaction was consummated on May 23, 1975, and Cross-Sound has been providing service under such acquired authority since that date. By order served October 22, 1975, the Commission reopened the proceeding for receipt of certain supplemental material submitted by applicant and to consider the environmental effects of the proposed service. On October 29, 1975, Cross-Sound duly filed a motion to have itself substituted as a party in this proceeding as successor in interest to NLFL which motion was granted by the Commission's decision of November 19, 1976, to which this petition is directed. On November 21, 1975, Cross-Sound also filed a petition for reconsideration of the order of October 22, 1975, and a petition to reopen the record for receipt of further evidence in response to the further evidence of applicant that was received by the Commission under the terms of the order of October 21, 1975.

On November 19, 1976, the Commission issued a decision in which a majority of Division 1 has directed that a three-year term certificate should be issued to Mascony. This petition is submitted in response to that majority opinion.

II

PREFACE

Cross-Sound respectfully submits that the majority opinion of Division 1 is predicated upon serious error of fact and law and must be set aside. Cross-Sound subscribes in full to the dissenting opinion of Commissioner Murphy which Cross-Sound adopts as part of its petition and requests to have it considered as having been incorporated by reference herein. More particularly, Cross-Sound submits that the majority opinion is in error in the following respects:

1. The majority opinion violates the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. ("NEPA") and judicial decisions construing its requirements.

The obvious purpose of [illegible] is to require that all relevant information with respect to an agency action be considered at a meaningful point in the course of the decisional process. In order to realize this objective it is clearly necessary that the environmental impact statement be prepared prior to oral hearing. This has been recognized judicially and by the Commission in its Revised Guidelines For Implementation of NEPA, 352 I.C.C. 451 (1976). In this case, however, environmental data was not accumulated until after completion of oral hearings thereby rendering the envvironmental procedures a meaningless excerise.

2. The majority opinion unlawfully, relieves applicant of its statutory burden of proving its fitness.

Under the statutory provisions pursuant to which this application must be evaluated applicant must, as an essential prerequisite to issuances of authority, establish by competent evidence its fitness to perform such service including the operational feasibility of its proposal. Applicant has not met that burden and, in recognition of its failure, the majority has given applicant three years to do so. Such an extraordinary waiver of a statutorily imposed requirement is beyond the Commission's power to grant.

3. The majority opinion denies Cross-Sound and other parties of due process.

Long after the close of the record the majority has allowed applicant to introduce new evidence to cure basic defects in its case. At the same time, however, it has denied Cross-Sound and other protestants any opportunity to test the validity of that supplemental material by cross-examination or to submit evidence in rebuttal. As noted by Commissioner Murphy such tactics clearly deprive protestants of due process and represent a radical departure from the policy of fundamental fairness that has traditionally characterized Commission proceedings.

4. The majority has acted arbitrarily and capriciously in refusing to apprise itself of current circumstances before making a decision on the basis of a stale record.

Since the record was closed in this proceeding there have been significant changes in circumstances which must be considered by the Commission if it is to render a decision which is based on substantial, competent evidence. The fact that such changes have occured has been called to the Commission's attention but it has refused to consider them because such consideration would allegedly have caused further delay in disposition of the case. Such a contention is vacuous, however, since, as Commissioner Murphy noted, such evidence could easily have been received and considered without any significant delay.

5. The majority in dealing with the issue of public convenience and necessity has acted with total disregard for well-established principles and precedents.

In dealing with the issue of public convenience and necessity the majority has committed error in predicating a finding of need upon erratic peak period demands and in ignoring its obligation to permit Cross-Sound to develop its newly established operation without imposing upon it the financial burden of wholesale traffic diversion.

III

ARGUMENT IN SUPPORT OF ALLEGATIONS OF ERROR

1. The majority opinion violates NEPA and judicial decisions construing its requirements.

The horrendous environmental consequences of applicant's proposal have been set forth in detail in the Commission's Environmental Impact Statement ("EIS"). As but two examples of these consequences reference need only be made to the fact that Mascony's proposed operation would result in serious damage to the sewage system of Greenport, N.Y. and would cause insurmountable traffic congestion in that village thereby endangering health and safety by impeding emergency vehicles. The litany could go on and on but little purpose would be served in its recitation. The important consideration is that such adverse consequences were identified only after the evidentiary record was closed and interested parties no longer had an opportunity to participate in any meaningful way in the Commission's procedures.

While the majority seeks to excuse this basic deprivation of due process by suggesting that all parties had an opportunity to submit comments on the draft EIS such a rationalization is totally untenable. If the record in this proceeding reveals anything it is that the self-serving assertions of applicant are totally unreliable. Each time they have been subjected to cross-examination they have been shown to be laced with inaccuracies and inconsistencies. Indeed, this case is an ideal illustration of the essential wisdom reflected in judicial decisions requiring that the Commission's environmental investigation must precede oral hearings rather than occur as an afterthought. See, for example, Harlem Valley Transportation Association v. Stafford, 500 F.2d 328 (2d Cir. 1974) affirming 360 F. Supp. 1057 (S.D.N.Y. 1973) and Greene County Planning Board v. Federal Power Commission, 455 F.2d 412 (2d Cir. 1972). Even the Commission in its recent decision in Ex Parte No. 55 (Sub No. 4), Revised Guidelines For The Implementation of NEPA, 352 I.C.C. 451, 459-60 (1976) has made the following concession in this regard:

> ....we have concluded that with respect to the timing of impact statements, both the draft and final statements normally will be prepared prior to hearing, whether oral or written. There are two underlying reasons for this conclusion. First, the Administrative Procedure Act requires that decisions in adjudicatory proceedings rest on the evidence of record, and as to such evidence, opportunity for cross-examination should be afforded. Inasmuch as NEPA requires that environmental factors be considered in the agency review process, the impact statement should be treated as evidence, subject to cross-examination, and be placed in the record along with the other evidence. To ensure this, the final statement should be made available prior to the submission of written verified statements under modified procedure or 15 days prior to the commencement of oral hearings (or at least that portion of the oral hearing concerned with environmental matters).

The procedure followed in this proceeding is plainly violative of the foregoing requirements. It is perhaps ironic that the majority attempts to excuse this basic deficiency on the grounds that affording the parties their procedural rights would cause undue delay. Since the denial of those rights will obviously not pass judicial muster the majority by its action is actually causing rather than avoiding further delay.

2. The majority opinion unlawfully relieves applicant of its statutory burden of proving its fitness.

The two basic requirements that must be satisfied by any applicant for water carrier operating authority from this Commission are explicity set out at Section 309(c) of the Act [49 U.S.C. 909(c)]. Those two requirements are, of course, a showing of unfulfilled public need for the proposed service and the fitness of the applicant to provide it. One of the basic elements of fitness is operational feasibility. *Stone Lines, Inc., Contract Carrier Application*, 54 M.C.C. 310 (1952) and *Bowman Transp. Inc., Ext. - Florida*, 107 M.C.C. 876, 881 (1968).

The majority concedes that "...many problems remain before applicant will be in a position to begin operating." Although such a finding is clearly irreconcilable with a finding of operational feasibility and, in turn, fitness, the majority nonetheless grants the application. Such an action is a clear violation of the requirements of Section 309(c) and cannot be cured by allowing applicant three years to demonstrate what every other applicant for operating authority has always had to prove as a prerequisite to a grant of authority.

3. The majority opinion denies Cross-Sound and other parties of due process.

As Commission Murphy details in his dissent, the action of the majority represents a flagrant and serious denial of due process to Cross-Sound and other parties adversely effected by such action. The majority attempts to excuse this basic deprivation by suggesting that the supplemental bootstrap evidence received from applicant will be considered only "...insofar as such matters may be encompassed in the final environmental impact statement." The majority then goes on to assert that protestants and other interested parties have been given "...a full opportunity to present any matters bearing on environmental effects in the course of the environmental review process." Such an assertion is a serious distortion of what has actually occurred. While the parties did indeed have an opportunity to comment upon a draft EIS prepared largely in reliance upon unsworn, self-serving contentions of applicant's president, an individual whose credibility was thoroughly repudiated during the course of oral hearings, there was never any opportunity to test by cross-examinatioion any of the "facts" furnished by applicant as the basis for both the draft and final EIS.

As but one example of the consequences of such deprivation is the majority's determination that fuel savings projected by applicant "could be significant and in our opinion on the whole outweigh the possible environmental damages that could result from authorization of the proposed operation." The childishly simplistic calculations on which the projection of 600,000 gallon fuel saving is based would never have survived an oral hearing. In this regard there is attached hereto as Appendix A a letter from a casual observer who, from the most cursory examination of the majority opinion and the accompanying EIS was readily able to discern some of the more obvious defects in the projection. This letter is not tendered as evidence but merely as an illustration of just how vulnerable applicant's self-serving calculations are to even the most superficial analysis.

Also significant is the fact that the fuel savings projection is based on traffic figures supplied by applicant's president whose total expertise in the area consists of summer employment as a deckhand on one of the vessels operated by NLFL. Yet the self-serving and totally undocumented assertions of such a person have been accepted by the majority without any opportunity for cross-examination as to some of their more preposterous features.

These, of course, are just the patently obvious faults that protestants could have highlighted by cross-examination if the opportunity had been provided. Less obvious but equally serious are facts that are not apparent and could only have been elicited on cross-examination. For example, applicant told the Commission's environmental staff that it intended to use the Cape Henlopen as its primary vessel. That is the only diesel vessel which applicant alleged that it owned and is considerably more fuel efficient than applicant's other vessels which are old steamboats. It has been publicly reported, however, that, according to Coast Guard enrollment records, applicant tranferred the Cape Henlopen to the Providence Steamboat Company within a matter of a few weeks after acquiring it from the Delaware River and Port Authority. Thus, while Mascony was advising the Commission of its intention to use the Cape Henlopen as its primary vessel it apparently had already disposed of it. This is but one example of the type of vitally important information that could only have been elicited by cross-examination of applicant's witnesses on the "facts" that serve as the basis for the EIS which the majority relied on as if it was based entirely on competent evidence.

Such a situation is so obviously fraught with unfairness that it is inconceivable that a reviewing court would sustain the decision which it has produced. Certainly, the public interest and the integrity of the Commission's procedures would be far better served if the Commission, on its own initiative, corrects the situation by adopting on reconsideration the far more appropriate course of action suggested by Commissioner Murphy rather than be forced to do so eventually by a reviewing court.

4. The majority has acted arbitrarily and capriciously in refusing to apprise itself of current circumstances before making a decision.

The important changes in relevant circumstances that have occurred since the close of hearings in this proceeding could be recited at length. Foremost among these are the tremendous qualitative and quantitative improvements in existing service that have been achieved. These include the expansion of scheduled service to year-round operation and some 24 daily crossings during peak periods, institution of a highly successful reservation system, improved terminals, and new vessel construction. On the other hand, there are the many additonal impediments to feasible operation by Mascony that have come into being. These include foreclosure sale of the property on which Mascony's proposed Greenport terminal is to be located, the resolution of the City of New London that the pier that Mascony proposes to use as its New London terminal may not be used for such purpose, the fact that Mascony no longer owns the Cape Henlopen, that the Greenport is the subject of a foreclosure proceeding by creditors in the U. S. District Court in Boston, and the fact that applicant has been in default since December 31, 1975, on a $550,000 mortgage on the Cape May.*/ Finally, there is the tremendous groundswell of opposition by members of the communities that would be impacted by the Mascony proposal that has developed since the devastating environmental consequences first became apparent. Indicative of the intensity of that sentiment are the recent news articles attached hereto as Appendices E, F, G and H. All of these developments are matters which the majority would foreclose itself from considering.

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*/ See Appendices B, C and D.

As justification for keeping its hands firmly clasped over its eyes and ears the majority asserts that it is interested in expediting final disposition of the case. Ironically, it cites in support of that contention the same language of I.C.C. v. Jersey City, 322 U.S. 503, 514 (1944) that protestants cited in their reply to applicant's request to submit late filed evidence to shore up its case. Interestingly enough, the majority found that case unpersuasive in deciding to receive applicant's evidence. It was only when protestants sought equal treatment that the majority suddenly became concerned with the need for expedition. However, as Commissioner Murphy so aptly observed, the record could easily have been brought up to date without the slightest delay. Even at this point, the delay that would be involved in taking the time to provide the Commission with a factual record comprised of current and accurate information would be minimal.

Even if this were not the case, however, persisting in the majority's determination to act on the basis of a stale and inaccurate record would be an abrogation the most fundamental obligation of responsible regulatory action. As was stated in Isbrandtsen Co., Inc. v. U.S., 96 F.Supp 883, 892 (D.D.C., 1951):

> ...the agency does not do its duty when it merely decides upon a poor or nonrepresentative record. As the sole representative of

> the public, which is a third party in these proceedings, the agency owes the duty to investigate all the pertinent facts, and to see that they are adduced when the parties have not put them in.... The agency must always act upon the record made, and if it is not sufficient, it should see the record is supplemented before it acts. It must always reserve the elements of fair play, but it is not fair play for it to create an injustice, instead of remedying one, by omitting to inform itself and by acting ignorantly when intelligent action is possible....

Clearly this is a case in which the Commission should be guided by the wisdom of its senior and most highly respected member and refuse to ratify an ill considered and uninformed action that will inevitably bring embarrassment to the Commission if it becomes necessary for an appellate court to direct the Commission to do what an agency of its stature should have the good judgment to do of its own volition.

5. The majority in dealing with the issue of public convenience and necessity has acted with total disregard for well-established principles and precedents.

Even assuming the propriety of deciding this case on the basis of evidence which pre-dates the dramatic impact of the energy crisis on intercity automibile traffic, the removal of a cross-sound bridge threat as an impediment to major investment, and the many service improvements that have been introduced by a new, aggressive, and locally-based management, it is obvious that the majority has badly misread the evidence concerning public convenience and necessity.

The majority was obviously impressed by the number of witnesses presented by applicant. No consideration was apparently given to the fact that, as pointed out on brief, several of those witnesses had a personal or financial stake in the outcome of the case. Similarly, no consideration was given to the fact that many of those witnesses had either never used the ferry, had not used it for years prior to their testimony, or had used it only on infrequent occasion and then only during periods of peak demand. Even putting these considerations aside, however, and taking the testimony of applicant's witnesses at face value it is apparent, as Commissioner Murphy noted in his dissent, that such testimony was given inordinate weight. One hundred witnesses, even if their testimony had been representative and spontaneous, would not be a significant number in relation to the hundreds of thousands of passengers that had used the ferry during the same period as that covered by the testimony of those witnesses.

However, the witnesses presented by Mascony were not representative. Rather, as the record reflects they were the final distillate of an ambitious advertising and solicition campaign extending to countless thousands of potential witnesses from among whom only the most vicious were selected to testify (tr. 1095-1100). In addition, the testimony of these witnesses, to the extent that it related to any specific service failures, invariably dealt with delays encountered during peak midsummer and holiday demand periods. The Commission has often has occasion to recognize that a carrier cannot be expected to maintain sufficient equipment and personnel to accommodate the most extreme peaks in demand without delay. No carrier could operate viably if that were its obligation. Yet the failure to satisfy such peak demands in every instance is precisely the basis for the majority's finding of public need for Mascony's service. As Commissioner Murphy notes in his dissent, such a finding is irreconcilable with long established Commission precedent.

In its consideration of the question of public need the majority also failed to give adequate consideration to existing services. For example, it summarily dismissed the interest of Bridgeport & Port Jefferson Steamboat Company (B&PJ) on the grounds that its operation is so far removed from the proposed operation as to be non-competitive. This, of course, ignores the testimony of several witnesses as to their use of the B&PJ service as an alternative to the then existing service of NLFL. It is also inconsistent with the fact that the majority relied without hesitation on allegations of fuel savings predicated upon the assumption of vehicles using applicant's service to and from points which could be served just as directly or, in some instances, more directly by B&PJ.

As pointed out by Commission Murphy, the majority, contrary to long-established precedent, also failed to afford Cross-Sound the consideration to which it is entitled as a newly established service whose full potential in responding to public demand has yet to be realized. Traditionally, the Commission has given such new services a reasonable opportunity to meet service demands before subjecting them to traffic diversion. Here, the majority has refused to follow that practice.

All of these departures from long-standing Commission practice are unsupported by any satisfactory explanation. As such they are untenable. Secretary of Agriculture v. United States, 347 U.S. 645, 652-3, 98 L.Ed 1015, 1023-4 (1954).

IV

CONCLUSION AND PRAYER

The majority decision can only be characterized as a mistake. It is a mistake which confronts the Commission with two basic alternatives. The first would, of course, be to uphold the majority decision on reconsideration thereby placing the Commission in the position of having to expend its limited resources in defense of a decision which any objective observer must concede to be so permeated with basic infirmities as to make the likelihood of judicial affirmance remote to say the least. On the other hand, the Commission on more thorough reflection of the full dimensions of this proceeding and all of its ramifications, can concede the essential wisdom of Commissioner Murphy's dissenting opinion and adopt it as the final position of the Commission. In this way the best interests of all concerned will be served by avoiding needless protraction and expense while at the same time placing applicant in a position where it can come forward with a new application at any time it believes it can present sufficient evidence to satisfy its statutory burden of proof.

WHEREFORE, for all of the foregoing reasons, Cross-Sound respectfully prays that the Commission enter an order setting aside the majority opinion of Division 1, adopting in its place the opinion of Commissioner Murphy and denying the application in its entirety without prejudice to the filing of a new application.

Respectfully submitted,

CROSS-SOUND FERRY SERVICES, INC.

By________________________________

Peter A. Greene

Its Attorney

Of Counsel:

MACLEAY, LYNCH, BERNHARD & GREGG
1625 K Street, N.W.
Washington, D.C. 20006

Dated: December 20, 1976

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon counsel for all parties of record, via first-class mail, postage prepaid this 20th day of December, 1976.

Peter A. Greene

APPENDIX A

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12/7/76

Cross Sound Ferry Services, Inc.

Gentlemen -

The enclosed letter offers a number of points which I think you may find useful!

Best regards,

Sincerely,

Frederick J. Lightfoot

P.O. Box 554
Greenport, N.Y.11944
December 7, 1976

The Editor
Suffolk Times
Greenport, N.Y.

Dear sir:

As an industrial engineer with seven years' experience as a contracting officer's engineer for the U.S. Army Chemical Corps, it has often been my responsibility to prepare and analyze reports on technical data. Naturally enough, my attention was attracted to the seemingly extravagant claim that a Mascony ferry between Greenport and New London would save 600,000 gallons of fuel per year. It was this purported saving that the majority of the Commissioners in Division 1 of the Interstate Commerce Commission referred to as the overriding factor in their recent decision to grant approval for the ferry, in the face of all the admitted damage it would do to the communities of Greenport and New London.

Reference to a copy of the ICC Report (No. W-1270) revealed the calculation of fuel savings on pages 101-102. It is predicted there that two vessels owned by Mascony would consume approximately 432,000 gallons of fuel per year in the proposed ferry service. They would carry an estimated 63,066 automobiles and 3,319 commercial vehicles. Mascony argues that the vehicles using the ferry would all be saving the 200 mile trip by road between Orient (or Greenport) and New London. Using an EPA figure of average gasoline consumption for pasenger automobiles of 14 miles per gallon, and a similar figure of 5 miles per gallon for commercial vehicles, the savings in gasoline consumption on the highways would then be:

$$\frac{63{,}066 \text{ x } 20}{14} \text{ plus } \frac{3{,}319 \text{ x } 200}{5} \text{ or roughly 1,034,000 gallons of gasoline.}$$

Subtracting the 432,000 gallons used by the alternate ferry transportation, the net saving in fuel is approximately 600,000 gallons.

Aside from the obvious, but relatively insignificant question as to whether 14 mpg is a valid figure even today- to say nothing of the future- for passenger automobiles on long distance highway travel, the calculation laid forth is based on a clearly untenable assumption- that all the cars and commercial vehicles on the ferry would be traveling between Greenport or Orient and New London. Actually, as indicated in a Connecticut DOT report referred to on Page 89 of the ICC report, the bulk of the present traffic on the Orient ferry is recreational. From our own acquaintance with some people who have used the ferry, we would say that a typical user is apt to be someone planning a vacation trip, either leaving from New York City or Nassau County to go to New England, or someone coming from New England to New York. In stead of taking the Connecticut Turnpike, the traveler decides to drive out on Long Island to the ferry, board it, and continue his trip in New England from New London (or vice versa for someone in New England), thereby gaining the opportunity for some sightseeing on Long Island or a chance to visit friends or relatives there. Far from saving 200 miles of travel and the fuel for it, there is actually no saving in fuel at all, since the highway travel east-west or west-east on Long Island is at least as long as the same journey on the parallel path on the mainland. Indeed, if no ferry existed at all, many pleasure trips now being made between eastern Long Island communities and New England simply would not be made at all. Thus, as the ICC report itself inadvertently point out on Page 92, in talking about more tourists coming from New England to Greenport on the ferry, a ferry service encourages the use of fuel in unnecessary but pleasurable driving.

To evaluate what the actual savings in fuel achieved by a North Fork to New London ferry are, there would have to be a thorough analysis of the origins and destinations of a large sample of the vehicles now being carried by the Orient ferry, and a determination of how much of the traffic is reasonably essential. It is fairly certain that the fuel savings will fall far below the estimate used in the ICC report. The failure of the ICC Commissioners to demand such an analysis for incorporation in the report when there has been such thorough investigation of statistics on local traffic at the two land terminals is surprising, and it becomes a fatal flaw, invalidating the whole decision, when so important a calculation is used as the basis for an otherwise objectionable decision.

There is another most important aspect to a proposed Mascony terminal at Greenport which the ICC Commissioners have carelessly failed to consider, and that is the effect of possible expansion of the service. The ICC report, on Pages 112-115, refers to a Tri-State Regional Planning Commission report of December 1975 in which it is indicated that first class ferry service between the North Fork and New London may eventually attract so many drivers that anywhere from 200,000 to 2,000,000 vehicles a year would take advantage of the service! As the Commission states flatly, there is only one site on the North Fork where a terminal for such expanded service would be practical, and that is Orient Point. If Mascony is allowed to establish its terminal at Greenport, and provides the more comfortable service it promises, it is likely that the number of cars and trucks it will carry will increase well above the 66,000 now projected. Mascony has a third ferry in reserve, presumably for "back up" according to Page 82 of the ICC report, and it is difficult to believe that both this ferry and possibly new ferries will not be pressed into service if and when demand builds up. Since even the use of two ferries will create traffic jams and air pollution at times exceeding allowable limits, the possible effects of more ferries and more vehicles are nightmarish. Certainly Greenport's hopes of rebuilding itself as a tourist and residential area blessed with clean air from the Bay will be dead.

One final point. If, despite all the technical shortcomings of the ICC report indicated above, and despite the brilliant comments of ICC Commissioner Murphy in attacking its legal premises, Mascony should still win approval for a Greenport site, the exact location of its terminal should be most carefully considered. The Long Island Railroad dock has been proposed as an alternate site, on the grounds that its conversion to a fishing and recreation pier is unlikely. Actually, there are moves afoot in Albany to sell licenses for salt water fishermen, and the funds raised will be available in part for establishing fishing piers. So this plan is not dead. In any case, it would be preferable to have the ferry towards the east end of the village so that the fumes of its diesel engines and the fumes of all the vehicles it carries will not be carried into the heart of Greenport by the prevailing west and southwest winds in the peak of the vacation season.

Sincerely yours,

Frederick Lightfoot

Frederick S. Lightfoot, M.S.(I.E.)

APPENDIX B

Councilor Sprecace moved: That the Council enter into an agreement with Mascony for City Pier retroactive to December 1 with two (2) conditions, both of which must be in the opinion of our Director of Law ultimately enforceable in order for me to support this amendment.

1st Condition. That the lease must clearly stipulate and it must be supportable that at no time would the City Pier be used by Mascony as a staging area and as the Pier of Operation for a Ferry Service to Long Island.

2nd Condition. That this would be for a 90 day period and would be the last lease to be extended to Mascony, not withstanding any pending actions before the Interstate Commerce Commission.

The motion passed on a 4 to 2 vote with Mayor Uguccioni, Councilor Curtin, Councilor Nahas and Councilor Sprecace voting Yes and Councilor DiMaggio and Councilor Morris voting No.

CERTIFICATE

THIS IS TO CERTIFY that the above is a true and correct copy of an excerpt taken from the minutes of the Special Meeting of the Council of the City of New London held on Monday, December 13th,1976.

ATTEST:

Grace M. Podeszwa

Grace M. Podeszwa, City Clerk

Dated at New London,Connecticut, this 14th day of December, 1976.

[illegible]ned Greenport Ferry Line Foundering

By Bob Wacker

What was to be the flagship of a Greenport-to-New London ferry service is scheduled to be sold at auction, by federal court order, the second week of January, to satisfy an unpaid bank mortgage balance of $374,751.

Another bank holds a $550,000 mortgage on another boat owned by the Mascony Transport and Ferry Service Inc. of New Bedford, Mass., the company that hopes to begin the ferry service. The [illegible] is nearly a year past due, but the bank says it will not press for payment.

Also, New Bedford, where three of the company's boats are docked, claims that the firm owes it dockage fees totaling nearly $8,000, and that it will not let the boats leave the port till the bill is settled.

All of these problems were pressing Mascony on Nov. 3 when three members of the U.S. Interstate Commerce Commission overruled a trial judge's recommendation and gave the company a three-year permit to operate the ferry service. ICC spokesmen said yesterday that they didn't know whether the commissioners had been aware of Mascony's financial problems and would not speculate as to what they will do now.

The federal court order was obtained by Chemical Bank of New York which received the mortgage on the 350-foot boat "Greenport" and other assets, when it bought Long Island's Security National Bank. Chemical renegotiated that mortgage in July, 1975 to $493,551. By August, 1976, payments had reduced that amount to $374,751, but Chemical sought a judgment ordering that the entire balance be paid at once. Chemical Bank spokesmen would not discuss the case; Mascony president George Power would say only that the demand for immediate payment began with a disagreement over interest rates.

U.S. District Court Judge Joseph Tauro first ordered the Greenport auctioned last Friday. A few days later, after the ICC decision was announced, Chemical Bank asked, and Tauro granted, a postponement setting the auction to the second week of January. The bank says that the granting of the ferry franchise made the Greenport worth more than the [illegible] it had brought [illegible]

The other mortgage, for $550,000 on the boat "Cape M[illegible]," is held by the Rhode Island Hospital Trust National Bank of Providence. Bank spokesman Michael Howard confirmed the amount, and the fact it was due last Dec. 31. But, he said, "We're not led to make things difficult for them now. They've finally got their ICC rights after a long bitter struggle."

Richard [illegible], New Bedford city solicitor, said Mascony has refused to pay $15-a-day dockage fees on one boat which is moored to another boat instead of to the dock, and has also fallen several months in arrears on dockage for all boats; the total, he said, adds up to [illegible] They have been negotiating [illegible] part of the bill for $10 a day [illegible] "But if they don't pay up, I'll go to [illegible] on those boats. They don't leave New Bedford till they pay."

APPENDIX D

ICC Acknowledges Lack of Ferry Facts

By Bob Wacker

A spokesman for the U.S. Interstate Commerce Commission has acknowledged that it did not know certain facts aboaut the financial condition of a company that received an ICC permit last month to begin a ferry service between Greenport and New London, Conn.

The ICC did not know, for example, that the company, Mascony Transport and Ferry Service Inc. of New Bedford, Mass., might not have the use of either of the two vessels it told the commission it was considering using in the ferry service. The Cape Henlopen is now owned by another company which is involved in oil barge operations. The second vessel, the Greenport, is to be sold at auction next month to satisfy a mortgage claim, under a federal court order.

The ICC spokesman, who asked that his name not be used, said earlier this week that the agency does no investigating of its own and could take no action on the ferry permit unless it was officially notified of circumstances that might warrant reconsideration.

Meanwhile, two opponents of Mascony's ferry franchise, the Greenport Village Planning Board and Cross-Sound Ferry Services Inc. of New London, both of which expressed surprise when apprised of the same information, said that they would include the information in a challenge to the permit. The challenge must be filed by Monday, Under the commission's rules.

The three-year franchise that would allow Mascony to operate the ferry service was granted by three ICC commissioners last month, after the court action involving the Greenport had begun but before the auction of the vessel was approved. The commission spokesman, a member of the staff of one of the commissioners, said that they had not known of the financial details because the commission lacks the manpower to investigate on its own. "We've got about 6,000 applications like this a year and only 85 attorneys," he said.

At one time, Mascony was the owner of record of four vessels, all more than 300 feet long. The records of a federal District Court in Boston show that the 350-foot Greenport has been ordered sold next month to satisfy an overdue mortgage of $374,751 held by the Chemical Bank of New York. And Coast Guard records show that the 320-foot Cape Henlopen was purchased from Mascony by the Providence Steamboat Co. of Rhode Island, whose president, Frank Mauran, was identified by Mascony's president, George Power, has a principal of Mascony.

Another Mascony vessel, the Cape May, is mortgage to the Rhode Island Hospital Trust National Bank for $550,000. That mortgage matured on Dec. 31, 1975; a bank official has said that the bank will not press Mascony because one of its principals, whom he would not identify, has been a valued customer for years. Other sources said the customer was Mauran.

Only one of the four boats that Mascony owned, the Delaware, is listed by the Coast Guard as being unmortgaged. It reportedly is in Florida and was not described by the ICC as a likely ferry vessel for the Mascony service.

NEWSDAY, FRIDAY, DECEMBER 17, 1976

APPENDIX E

Greenport To Fight Mascony

by Ronnie Wacker

First they were shocked. Then they got angry. And this week Greenport merchants and Village officials are organizing to fight the Interstate Commerce Commission decision which has approved operation of a second ferry service from the North Fork to Connecticut, out of Greenport.

Twenty-eight businessmen took space in this week's Suffolk Times to accuse the I.C.C. of saying: "To hell with Greenport."

In the ad in this issue they ask area residents to pick up petitions at local shops protesting the licensing of Mascony Transport and Ferry Service Inc. "Get signatures of friends and neighbors," the ad urges, "There are only 11 days left to do the job."

Up and down Front and Main Streets in Greenport, villagers were discussing what to do next. Rumors of meetings for action rose and fell as groups came together and dispersed. Numbers of people said they are planning to attend an information meeting on traffic problems and proposals to be held by the Village Planning Board next Thursday, December 9.

Planning Board Chairman Jon Richmond has written for help from U.S. Representative Otis G. Pike; U.S. Senator James Buckley; Minority Assembly Leader Perry B. Duryea; and Senator-elect Daniel Moynihan.

He asked the federal and state officials to investigate the ICC decision to grant Mascony permission to operate a passenger and freight ferry service between New London, Conn., and Greenport. The decision overrules the Administrative Law Judge who had denied a certificate to Mascony because of the environmental impact on Greenport and safety problems in New London such a service would bring.

Mr. Richmond reminded the lawmakers that:

1. Much of the evidence upon which the new ICC decision was made is no longer applicable. Public testimony at ICC hearings complained of poor service that the former ferry company gave in its Orient to New London route. The company has since been sold to Cross-Sound Ferry Service which has improved the operation, providing year-round service, reservations and new vessels, thus canceling out the objections made in the first hearing. While Mascony was permitted to add new testimony, interveners were not.

2. The village "simply cannot handle the volume of anticipated traffic on its narrow streets."

A Suffolk County traffic safety study last summer showed that downtown business streets are accommodating the maximum amount of traffic they can safely handle, he noted in the letter.

George Power, president of Mascony, has not returned telephone calls to his Massachusetts-based company concerning his plans. His lawyer, Frank Wiener, said he expects that the licensing procedure will take time. "Look how long this has taken," he said. Mascony first filed for a ferry permit across Long Island Sound back in May, 1973.

Before service can begin Mascony must also get ICC approval for its rates and tariffs, he said. The company is still in litigation with the Mitchell family of Greenport, who maintain that contracts under which Mascony secured agreements to use Mitchell parking area for boarding cars and trucks are fraudulent.

Mr. Wiener also drew attention to a Commission warning that it would take into account any "unreasonable actions" by any particular party to hinder "good faith efforts" by the applicant to operate his service with minimal environmental harm.

Greenport businessmen, for their part, pointed to environmental damage they foresee in a ferry disgorging up to 100 cars several times a day onto village streets. They list in their ad: congested streets, resulting unemployment from dying businesses, homes devalued, streets clogged to firefighters and ambulances.

They conclude: "This is what the ICC ruling in favor of Mascony means. Let the conveniences of a few be served...to hell with Greenport."

APPENDIX F

Mascony Ferry Approval Shocks Greenport

by Ronnie Wacker

The Interstate Commerce Commission last week granted Mascony Transport and Ferry Service Inc. permission to run a ferry between New London and Greenport. The reaction in Greenport was shock and disbelief.

The Commission itself admitted in the 2-1 decision that the volume of traffic introduced into the village's narrow streets may be bad for Greenport's environment. But, the two members said, that would be offset by savings of 600,000 gallons of gasoline by motorists who would not be driving around Long Island Sound.

The dissenting member said Greenport's orderly planning for the future was being sacrificed for "commercial exploitation."

Villagers agreed with him.

"It's an incredible decision," said Frank Fagan, proprietor of S.T. Preston's on Main Street.

"...weak," Brent Lynch president of the Cross Sound Ferry Service which presently operates from Orient Point to New London. The company will appeal the ICC order, he said.

"...a tenuous decision," according to Village Attorney John Munzel.

"It smells," said Robert Mitchell, whose parents are contesting the legality of an agreement by which Mascony plans to route its traffic behind Mitchell's Restaurant to Front Street and out First Street.

"We're taken aback by it," said Jon Richmond, Village Planning Board chairman, who said the the Board, which has opposed the Mascony proposal at ICC hearings, "has no alternative but to appeal—to fulfill our obligation to the people of Greenport."

The order, signed November 3, permits the Massachusetts based company to operate a ferry out of Greenport once it has determined exactly where it will dock, improved the landing point to allow docking, and suitable boarding areas, and complied with local, state and federal regulations.

Mascony plans to bring cars in from Front Street between the post office and Mitchell's Restaurant to its dock in the rear of the restaurant. [illegible] will unload cars and trucks down "Texaco Alley" alongside Mitchell's out to and across Front Street and up First Street to route 27A.

Pauline and Harry Mitchell, who had sold their restaurant to Advine Realty and then bought it back, are now protesting what they call fraudulent agreements under which Mascony scoured out the old Ford building to permit passage of cars and trucks to the dock in back, and granted permission to use the restaurant's parking area for staging facilities.

The ICC suggests in its 67-page decision that this additional traffic unloaded onto Greenport streets may have the beneficial result of improved tourism between New England and eastern Long Island.

But it acknowledges that environmentally, esthetically and in matters of automobile safety, Greenport will suffer with increased traffic on its narrow downtown streets.

At times, it anticipates, concentrations of carbon monoxide [illegible] idling cars waiting to board ferries would exceed national one-hour standards.

It also admits that the increase in automobiles and trucks will "tend to diminish appreciation" of the "charming, fishing village ambiance with its narrow streets, pleasure fishing boat marinas and large old houses." Mascony's large vessels, it points out, will be "incongruous with the esthetics of the village waterfront itself."

It makes note of a state department of transportation study which shows that the majority of traffic accidents in the village occur along Front Street at the intersection of Main, First, Third and Fifth Streets, the area Mascony proposes to use for its ferry landing. This will "enhance the potential for accidents," the ICC agrees.

However, it finds on the whole that "deleterious effects" on Greenport and New London are offset by an estimated 600,000 gallons of gas will be saved by elimination of driving around Long Island Sound.

The dissenting opinion in the 2-1 decision recommends denial of the application, pointing out: "...the desires of the citizens, primarily those of Greenport, to chart their own destinies through a careful planning process would be largely circumvented in the name of expedience and a desire for commercial exploitation."

The ICC order is the latest step in what the federal agency itself calls a proceeding which "has been, to say the least, unusual."

Mascony filed its first application for cross-Sound ferry operation May 29, 1973. After hearings in New London and Greenport, that fall and winter, the application was denied in June, 1974.

Request for a temporary permit was denied April, 1975. Then, upon Mascony's appeal that it had additional evidence, the hearings were re-opened October 1975.

Last January, 1976, an ICC fact-finding committee completed its report on environmental effects on Greenport of a ferry terminal in the Village.

Just recently Mascony withdrew its request to the U.S. Army Corps of Engineers for a permit to construct dolphins on the dock it proposes to use. The company has purchased four ferries ranging in size from 320 to 375 feet in length from the Delaware River Bay Authority, where they were routed between Cape May and Lewes, Dela.

With the withdrawal of the Army Corps application, villagers felt they had heard the last of Mascony.

"The whole thing caught us unaware," Village Planning Board Chairman Richmond said when he learned of the ICC order. "It looks as though we are being asked to sacrifice Greenport for Mascony and its stockholders."

Mr. Lynch of the Cross-Sound Ferry Service said he found the decision a "weak one." He said Commissioner Murphy, who gave the dissenting opinion, "is the ranking member. He gives some very strong points for an appeal. We shall appeal and we expect to win." He suggests that people in Greenport concerned about their village environment organize opposition to the decision.

His company is building a new boat now. "The whole thing could go down the drain," he said.

Frank Fagan said he wouldn't be surprised if the people of Greenport banded together and sued the ICC. "It's not an impossibility," he said. He scoffed at the notion that a ferry service would bring in more customers to local merchants. "We'll have the worst traffic jams we've ever seen. People will want to get out of here as fast as they can."

Southold Town Supervisor Albert Martocchia predicted that, with a second ferry service in the area, "they'll both starve." He had suggested that if another ferry service, were to be considered, it ought to be placed in East Marion down at Shipyard Lane.

Village Mayor Joseph Townsend said the Village Board will act after conference with the Planning Board. The Board, which was sitting when Mascony president George Power introduced the project three years ago, had informally approved it. After county and state traffic studies showed the impact on Greenport of the volume of traffic expected to be brought into the village, the Planning Board recommended against approval.

Village attorney John Munzel felt the decision was "a tenuous one". He said it's "patently absurd to give a permit when they're not even sure where Mascony is going to operate from."

Opposition To Mascony Mounts

by Ronnie Wacker

Support for villagers opposing location of a ferry service in the Greenport business district came from various directions this week:

1. A county traffic study shows traffic volume in village business streets [illegible] summer months has reached a "saturation level" requiring positive action."

2. U.S. Representative Otis G. Pike promises to "prompt" the Interstate Commerce Commission to "study and reply to criticisms" of its decision to grant a permit to Mascony Transport and Ferry Service Inc. to operate a ferry from Greenport to New London.

3. A former Army industrial engineer now living in Greenport analyzed the purported fuel savings upon which ICC based its decision as "actually no saving in fuel at all," terming the failure of ICC to demand a study of ferry riders' habits a "fatal flaw".

4. Village trustees at a special meeting Wednesday and at an executive meeting Tuesday of this week while not approving or disapproving a ferry service in Greenport, generally agreed that additional ferry traffic on Front Street would be detrimental to the village environment.

5. The Society for the Preservation of Long Island Antiquities asked ICC if it had acquired a survey of historic structures as required by federal law. An ICC spokesman said the request had not yet been received by the appropriate departments.

6. Volunteers were setting out on a door-to-door canvass this week to get signatures of villagers on a Greenport businessmen's petition calling upon the ICC to reconsider its decision. The total number of signatures was over 600, and is expected to reach 1,000 by the weekend.

The county study will be discussed tonight, Thursday, at an informational meeting called by the Village Planning Board in the Village Hall. The survey, completed this week, [illegible] conducted by the Suffolk County Department of Traffic Safety. It advises:

"It is essential that Village officials recognize that present traffic volumes during summer months have reached saturation levels and that positive action is required to avoid major traffic problems in the future."

Deputy Commissioner of Transportation John P. Sheridan suggested the only solution would be one-way streets and-or selected prohibition of parking along village business streets.

The study was undertaken last summer before the I.C.C. announced its decision November 19 to grant a three-year certificate to Mascony to operate a ferry service from Mitchell's dock. Mascony plans to route cars down Front Street.

The Planning Board had requested the study, it said, to help in drawing up proposals ordered by the Village Board for future parking areas in the village and improvement of traffic flow.

Congressman Pike, in a letter to Planning Board Chairman Jon Richmond pointed out that federal regulatory agencies such as ICC are beyond the power of individual members of Congress to influence or modify, but that he could "prompt them to study and reply to your criticisms of the decision handed down in the Mascony case, and indeed, I have been only too happy to do so."

Mr. Richmond had written to him and other federal and state officials for assistance in getting the ICC to review its decision. It is the Planning Board's contention that the ICC had reopened hearings to permit further evidence to be offered by Mascony, but had refused a similar request [illegible] interveners who wished to enter evidence that changed previous testimony.

Industrial engineer Frederick S. Lightfoot of Greenport, who was formerly with the U.S. Army Chemical Corps, found fault with ICC calculations that an additional ferry service across Long Island Sound would result in a savings of 600,000 gallons of gas by people who would otherwise drive around to New England through New York City.

Mr. Lightfoot pointed out that transportation studies show that the typical ferry user comes out from the city or Nassau County on a vacation trip. He decides to take the ferry rather than the Connecticut Turnpike to take advantage of a sightseeing tour of Long Island or to visit friends. "Far from saving 200 miles of travel and the fuel for it, there is actually no saving in fuel at all," he wrote in a letter to the editor of The Suffolk Times, "Since the highway travel east-west or west-east on Long Island is at least as long as the same journey on the parallel path on the mainland."

He calls the ICC failure to demand analysis of the origins and destinations of a large sample of vehicles now being carried by the Orient-New London ferry "a fatal flaw invalidating the whole decision, when so important a calculation is used as the basis for an otherwise objectionable decision.".

Although opposed to a ferry service operating out of Greenport, Mr. Lightfoot suggested that if such a service were ultimately approved, it would be preferable to have it at a site proposed earlier, the Long Island Railroad dock, where he said, diesel and other car fumes would not be carried into the heart of Greenport.

The Village Board, which had three years ago approved of a ferry service "if feasible," is concerned now that environmental effects of the traffic may be more than the village can absorb. The Society for the Preservation of Long Island Antiquities wrote to ICC to remind it of Greenport's status as "one of Long Island's most historic communities, with an unusually large number of historic structures."

Barbara Van Lieuw, editor of the Society bulletin, Preservation Notes, asked the ICC whether in its evaluation of the Mascony application an inventory of historic buildings had been undertaken in accordance with the Federal Preservation Act of 1966. She noted that a state inventory had been performed for the Long Island Railroad dock and yards by the late Christopher Beeson of Sh[illegible]

Greenport businessmen have had petitions displayed at a number of stores in the village for people to sign to indicate their support of merchants' efforts to get the ICC to reconsider the decision or reopen the hearings to permit testimony on the adverse impact of a ferry service on the village. By Wednesday nearly 700 signatures were counted.

December 16, 1976 — The Suffolk Times — Page 3

Both Ports Against Mascony

by Ronnie Wacker

Greenport and New London both took a second look this week at environmental problems they would get with a ferry service between the two ports and decided they'd rather not.

Both municipalities had welcomed a new ferry company a couple of years ago, when service from Orient Point to New London was poor, village and city officials said. New owners have upgraded the service across Long Island Sound, they said, and environmental studies have shown the ferry operation proposed by Mascony Transport and Ferry Service, Inc., would create severe traffic problems in the two ports. They voted simultaneously at meetings on both sides of the Sound Monday night.

The Village Trustees opposed Mascony's application and the New London City Council, in what one of its council members called a "weird" motion, voted to extend Mascony's lease of a city pier by three months—and no longer—on condition that the company does not use the pier to dock the ferryboats!

Greenport businessmen have gathered and sent in petitions with 1,277 signatures to the Interstate Commerce Commission, asking it to review the decision of November 3 which granted a permit to the Mascony company to operate a ferry from Greenport to New London.

Meanwhile it was learned the Mascony company has been plagued with money problems, and may lose its flagship, the Greenport, which has been ordered sold at auction the second week of January to satisfy an unpaid mortgage. It is also a year behind in mortgage payments on another boat, the Cape May. And the city of New Bedford says it won't let the three Mascony boats now docked there leave until the company pays up the $8,000 it owes in dockage fees.

The Greenport Village Board voted unanimously Monday night to oppose Mascony's proposal to use Front Street for cars entering and leaving the staging area behind Mitchell's restaurant, because of "severe environmental impact to the village of Greenport, more particularly extreme traffic congestion during summer months and danger to shallow clay water and sewer pipes from heavy traffic."

Asked if this decision would hold true for another location, such as the Long Island Rail Road dock, Trustee William Quinn said that if the railroad dock could be used, the Board felt "something could be worked out."

New London City Council member Ruby Turner Morris said the Council acted as it did because it had taken $750 a month rent from August, 1974, until expiration of the lease November 30 and decided the "decent thing" would be to allow Mascony to lease the pier to assist it in getting a license from the ICC.

"But we can't have that ferry operation here," said Mrs. Morris of the Mascony proposal. "There's no place to stage cars. They would be cutting across one of the busiest crossings in the city. It (the motion) is merely a technicality."

Hers was one of two votes against the Council motion, to four in favor. She argued for a resolution denying any extension of the lease, ferry or no ferry at the dock.

The motion must go to the New London Planning Board for its recommendations and return to the Council for final action.

The Mascony company was found to owe $374,751 of a $403,551 mortgage on the Greenport with Chemical Bank of New York, which obtained a federal court order to have the vessel sold at auction. The U.S. District Court had set the date for last Friday. After Chemical Bank learned of the ICC decision, it asked for a postponement until the second week in January, pointing out that the decision had made the boat more valuable than the money it would get from the sale.

The Greenport Village Planning Board, Cross Sound Ferry Service, East End Supply Co., intervenors in the ICC hearing, have filed appeals of the ruling. The Mitchell family, which maintains that leases of property behind their restaurant were obtained fraudulently by Mascony, is also filing an appeal for the decision.

DOCUMENT 347

BEFORE THE

INTERSTATE COMMERCE COMMISSION

IN THE MATTER OF

MASCONY TRANSPORT AND FERRY SERVICE, INC.

- INITIAL OPERATIONS -

NEW LONDON, CONNECTICUT TO GREENPORT, L.I., NEW YORK

* * * *

DOCKET NO. W-1270

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APPLICANT'S REPLY TO PROTESTANTS' PETITIONS FOR RECONSIDERATION AND PETITIONS FOR LEAVE TO INTERVENE AND RECONSIDERATION

* * * * * * * *

APPLICANT'S REPRESENTATIVE

Frank J. Weiner
Attorney At Law
15 Court Square
Boston, Mass. 02108

DUE DATE

January 10, 1977

BEFORE THE

INTERSTATE COMMERCE COMMISSION

IN THE MATTER OF

MASCONY TRANSPORT AND FERRY SERVICE, INC.

- INITIAL OPERATIONS -

NEW LONDON, CONNECTICUT TO GREENPORT, L.I., NEW YORK

* * *

DOCKET NO. W-1270

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APPLICANT'S REPLY TO PROTESTANTS' PETITIONS FOR RECONSIDERATION AND PETITIONS FOR LEAVE TO INTERVENE AND RECONSIDERATION

* * * * * * * *

I

Comes now Mascony Transport and Ferry Service, Inc. hereafter referred to as applicant and files this reply to the (1) Petitions for Reconsideration filed by Cross-Sound Ferry Services, Inc. hereinafter referred to as Cross-Sound, Bridgeport & Port Jefferson Steamboat Company, hereinafter referred to as BPJ, East End Supply Co., Inc. hereinafter referred to as East End, the New York Department of Transportation hereinafter referred to as NYDOT, Shelter Island and Greenport Ferry Co., Inc. hereinafter referred to as SIGF and the Village of Greenport, and collectively as protestants, and (2) the Petitions for Leave to Intervene and

Petitions for Reconsideration filed by Downtown New London Association, hereinafter referred to as DNLA, Chamber of Commerce of Southeastern Connecticut, hereinafter referred to as CCSE, Alfred S. Bicknell, Operator of the Fishers Island Ferry, hereinafter referred to as Fishers, Nelseco Navigation Company, hereinafter referred to as Nelseco, Harry J. Mitchell and Pauline Mitchell, hereinafter referred to as Mitchells, and Association of Businessmen of Greenport, hereinafter referred to as ABG.

II

By application filed May 29, 1973, applicant seeks authority to engage in operations, in interstate or foreign commerce as a common carrier by water in the transportation of general commodities and passengers by self-propelled vessels, between the ports of New London, Conn. and Greenport, Long Island, N.Y.

Extensive hearings were held in this proceeding wherein the Administrative Law Judge recommended a denial of the application. The Commission, Division 1, in its report printed at 353 I.C.C. 60 reversed the Administrative Law Judge's initial decision and found that present and future public convenience and necessity require operation by applicant in interstate or foreign commerce as a common carrier by water, of general commodities and passengers by self-propelled vessels, between New London, Conn. and Greenport, Long Island, N.Y. subject to the condition that such certificate be limited, in point of time, to a period expiring three years from its date of issue.

As a result of the report by Division 1, protestants have filed petitions for reconsideration and DNLA, CCSE, Fishers, Nelseco, Mitchells and ABG seek to intervene and have filed their respective petitions for reconsideration.

III

It is significant to note at this time, that the Commission, in its report at 353 I.C.C. 71, recognized that there was opposition to the application and stated the following:

> "The Commission is aware that not only Mascony but various other parties must cooperate in efforts along these lines, particularly insofar as environmental effects are concerned. If we find that a particular party has via unreasonable action hindered good faith efforts by applicant to, in particular, operate in a manner which causes minimal environmental harm, we shall take matters into account in determining whether to extend the certificate granted herein." (emphasis added)

In in treating the petitions for reconsideration and the petitions for leave to intervene applicant requests the Commission to bear in mind its statement concerning unreasonable actions taken by the oppositon.

It is submitted that collectively, protestants and intervenors have already taken unreasonable action in order to hamper, stymie, and hinder all of the good faith efforts made by applicant to operate in a manner which causes minimal environmental harm.

IV

REPLY TO PETITION FOR RECONSIDERATION OF CROSS-SOUND

Cross-Sound obviously subscribes to the dissenting opinion of a single Commissioner and supports its petition that the majority opinion violates the requirements of NEPA. The fact remains that the Commission reopened the proceeding and conducted its own environmental impact study in order to comply with NEPA. Cross-Sound and all other parties were given an opportunity to file comments to the environmental impact study prepared by the Commission's own personnel. Now that the Commission has issued its final environmental impact study, Cross-Sound, and others challenge the validity of the environmental impact statement on the basis that such impact statement was not prepared prior to oral hearing.

The argument of Cross-Sound that it was denied due process is without merit. Cross-Sound again relies on the dissenting opinion to the extent that new evidence was submitted and that it did not have an opportunity to submit evidence in rebuttal. Applicant calls to the attention of the Commission, that in its report, at 353 I.C.C. 64 the Commission stated the following:

> "However, in our consideration of other nonenvironmental issues, we believe that we may not take into account unverified evidence and shall accordingly only consider evidence presented through the time of the oral hearing." (emphasis added)

It is therefore clear that the report of the Commission is predicated on the evidence submitted through the oral hearing and the environmental impact statement prepared by the Commission's own staff personnel.

The thrust of the balance of Cross-Sound's petition for reconsideration is repetitive with respect to environmental considerations and that the majority of the Commission acted arbitrarily and capriciously. Other items concerning Mascony's present position with respect to ownership of the S.S. Henlopen and a foreclosure proceeding on the S.S. Greenport will be treated hereafter in a separate argument.

It is interesting to note further that Cross-Sound attached to its petition for reconsideration, certain newspaper clippings pertaining to the opposition to applicant's proposed ferry. If such unsolicited opposition did in fact exist, the parties in opposition would have appeared at the oral hearing.

V

REPLY TO PETITION FOR RECONSIDERATION BY BPJ

The petition for reconsideration filed by BPJ is a carbon copy of that filed by Cross-Sound. It should be understood that Cross-Sound is the successor-in-interest to New London Freight Lines, Inc., the original protestant. New London Freight Lines, Inc. and BPJ were commonly owned and controlled by the McAllister interests. Subsequently, in Finance Docket No. 27846, the operating authority of New London Freight Lines, Inc. was transferred to Cross-Sound.

Hence, for all practical purposes, insofar as this proceeding is concerned, BPJ and Cross-Sound have been commonly controlled. The only distinction between the petitions for reconsideration filed by Cross-Sound and that of BPJ is the change in counsel.

However, it should be noted that the style and format of the BPJ petition for reconsideration is identical to that of Cross-Sound and it would appear that the pleading was prepared by Cross-Sound's counsel and merely filed by BPJ's new counsel to this proceeding.

VI

REPLY TO PETITION FOR RECONSIDERATION FILED BY EAST END

Nothing in the petition for reconsideration filed by East End justifies consideration and/or reopening. East End is confused with respect to the order of the Commission of October 17, 1975. East End has been a party to this proceeding from the first day that the Administrative Law Judge allowed it to intervene and appear in opposition. It alleges that certain properties proposed to be used by applicant have been transferred and such will be treated hereinafter.

At no time has applicant ever proposed to utilize East End's property. Applicant never intended to utilize East End's property. It is difficult to fathom at this stage what East End is alluding to. It is apparent that the Commission, in its decision and in its environmental impact statement adequately realized the position of East End and found its position to be of no merit. Nothing has been submitted in East End's petition to justify a conclusion other than that found by the Commission in its report.

VII

REPLY TO PETITION FOR RECONSIDERATION OF NYDOT

The petition for reconsideration filed by NYDOT is certainly strange. At the time applicant submitted its application and proposal, the president of applicant had written to the Governor of the State of New York with respect to the proposed operation. Applicant's president's letter had been referred to Raymond T. Schuler, Commissioner, NYDOT. On November 1, 1973, Raymond T. Schuler, Commissioner, NYDOT forwarded to applicant's president, a statement to the effect that NYDOT had decided not to participate in the ICC hearing at that time and a complete copy of that letter is attached hereto as Appendix "A".

Subsequently, at the continuing hearings held at Greenport, Long Island, NYDOT intervened and was allowed to become a party protestant. Its sole purpose at that time pertained to the alley way leading into the property proposed to be used by applicant. NYDOT's position was that the alley way was insufficient for a commercial vehicle to enter the alley. It was agreed that the widening of the alley would satisfy the particular opposition. The record shows that the widening of the alley to enter the property to be used for docking facilities satisfies such opposition and consequently NYDOT's opposition would appear to be eliminated.

Now, after extensive hearings and numerous pleadings, NYDOT files a petition for reconsideration criticizing the Commission's report. No where in its petition for reconsideration does NYDOT show that the conclusions reached by Division 1 are contrary to the evidence. A substantial portion of the NYDOT petition for reconsideration and argument is a reiteration of information furnished to NYDOT by Cross-Sound and BPJ. It is further noteworthy that NYDOT, East End, and Cross-Sound attack the 600,000 gallon of fuel savings annually and thus there is a common denominator between the various pleadings.

VIII

REPLY TO PETITION FOR RECONSIDERATION OF SIGF

The thrust of the petition for reconsideration of SIGF is that is own operations have now changed. Now, it is handling 250,000 vehicles and 320,000 passengers per year, and the traffic route and staging area of the SIGF operation have been changed. Consequently, SIGF suggests that the proceeding be reopened because of its change of operations and change of the staging area of SIGF's operations.

It is perfectly clear that the petition for reconsideration of SIGF is nothing more than another dilatory tactic on behalf of an opponent to harass applicant and prevent its operation from becoming a reality. Assuming the record were to be reopened and further hearings were to be held, an extensive period of time would again elapse from the date of the initial hearing to a final conclusion. If it is assumed that the application would be granted, SIGF and any other potential intervenor and/or protestant could again ask the Commission to reconsider on the basis of "newer" changes of conditions and thus there would never be an end to the administrative process.

The report of the Commission clearly considered the time when litigation must come to an end and a decision must be made on the merits. At its report at 353 I.C.C. 63, 64, the majority of the Commission correctly alluded to the Supreme Court's decision in I.C.C. -v- New Jersey, 322 U.S. 503, 514 (1944) as follows:

> "If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening"

SIGF's petition for reconsideration seeks to set aside I.C.C. -v- New Jersey, supra.

While SIGF further challenges the legality of the use of the Mitchell's property, the fact remains that this is a matter presently pending in the New York Court as further mentioned in the petitions for leave to intervene and reconsideration filed by Mitchells. The points raised by SIGF, and as raised by other parties seeking to intervene, suggest that there has been collusion between Cross-Sound, BPJ, the remaining protestants, and those seeking to intervene, in an attempt to hinder the good faith efforts of applicant to operate in a manner which causes minimal environmental harm.

IX

REPLY TO PETITION FOR RECONSIDERATION FILED BY VILLAGE OF GREENPORT

The Village of Greenport, at this stage of the proceeding appears to take a position of reversing its prior position of being in favor of applicant's proposal.

It is obvious, and the record shows, that applicant received the full blessing of the Village of Greenport on June 18, 1973. Applicant relied on the resolution of the Village Board of the Village of Greenport. It invested thousands of dollars in securing appropriate real estate and leases for the operation of its proposed ferry service. Now, in view of the report of the Commission of November 3, 1976 (served November 19, 1976), the Village of Greenport, apparently under pressure, modifies its position based on a resolution adopted by the Village of Greenport on December 13, 1976. There is thus created a situation where the Village of Greenport (upon which applicant had relied upon as being wholly in favor of its proposal in 1973), by resolution 24 days after the report of the Commission, modifies its prior position. Again, it is submitted that the opponents to this proceeding are, by unreasonable actions hindering the good faith efforts of the applicant to operate in a manner which causes minimal environmental harm.

While the Village of Greenport refers to the conveyance of certain property described as the "Bohack" property to individuals as reflected in Exhibit A to its petition for reconsiderati the fact remains that the grantees of the "Bohack" property, William Bertenshaw, Henry Luke, Ernest Cordeiro, Edwin E. Davies, Jr., and John J. Andreoni are stockholders of applicant. William Bertenshaw is also a director of applicant.

The conveyance of the "Bohack" property to the grantees was necessary in view of the fact that applicant required additional cash. Applicant had never expected this proceeding to take as long as it did to be decided upon by the Commission. The agreement between applicant and the grantees with respect to the "Bohack" property further provides that applicant has full use of the property while it is owned by the grantees and that the grantees may reconvey the property to applicant at some future date for either cash or in exchange for additional stock. Thus, the allegation of the Village of Greenport that the "Bohack" property is not available to applicant is completely erroneous.

There is no merit to the petition for reconsideration filed by the Village of Greenport with respect to no site plan having been submitted. The transcript shows that the Village of Greenport's witness, at record page 2257, admitted that a site plan had been submitted to the Village of Greenport and that no action had been taken thereon. Upon information and belief, applicant submits that according to the zoning and other regulations of the Village of Greenport, if no action is taken within 90 days after submission of a site plan, the site plan is automatically approved. The confusion in this matter is due to the confusion and conflicts of opinion within the Village of Greenport, L.I.

Attached hereto as Appendix "B", is a copy of a letter from Robert W. Tasker, Esq. (a party to this proceeding) addressed to John J. Munzel, Esq. attorney for the Village of Greenport. The letter of Robert W. Tasker, Esq. had been forwarded to applicant's corporate counsel by Mr. Munzel. On April 11, 1975, applicant's corporate counsel replied thereto. A copy of the reply is attached hereto as Appendix "C".

Applicant takes the position that it has complied with all the zoning ordinances of the Village of Greenport. The Planning Board of the Village of Greenport just doesn't know which way to go or how to make up its mind. This matter is a local problem which can only be concluded in Greenport and is beyond the jurisdiction of the Commission. Obviously if the local matter cannot be clarified, the operation proposed by applicant would not go into effect. Hence, the three year limitation of the certificate proposed by the majority of Division 1 has merit.

It is further submitted that the Village of Greenport, apparently under pressure from Cross-Sound and others, acted in concert with Cross-Sound and others in filing its petition for reconsideration. Its petition for reconsideratio was not signed and consequently should be rejected. To support applicant's position that the Village of Greenport has been advised by Cross-Sound with respect to a position to be taken, it should be noted that the style and format of the opening pages of the petition for reconsideration are identical in all respect to that petition for reconsideration filed by Cross-Sound, BPJ, DNLA, CCSE, Fishers, Nelseco, and Mitchells. Reference to that sheet apparently designed to be a "certificate of service" sheet reflects a copy of its petition for reconsideration as not being served upon the parties representing Cross-Sound and BPJ. However, it is noteworthy that a copy of the petition for reconsideration had been served upon Joseph F. Regan, Esq., 302 State Street, New London, Connecticut who filed petitions for reconsideration on behalf of DNLA, CCSE, and Fishers. The question arises as how the Village of Greenport knew that a petition for reconsideration was to be filed by Joseph F. Regan, Esq. on behalf of various parties without having been so advised by Cross-Sound. Obviously, Cross-Sound advised the Village of Greenport to serve copies upon the parties and neglected to inform the Village of Greenport that a copy should be served upon its own representative.

X

REPLY TO PETITION FOR LEAVE TO INTERVENE AND PETITION FOR RECONSIDERATION OF MITCHELLS

The style and format, at least of the cover page and the first page of the Mitchell petitions are identical to those of the petitions for reconsideration filed by Cross-Sound. There is no doubt that Cross-Sound and its counsel have been acting in concert with the Mitchells and their attorney in doing everything in their power to hamper and hinder the proposed operation. While it is true that there is certain litigation now pending in the New York Courts regarding the availability to applicant of certain property through leases between Mascony and Advine, the fact remains that such is a matter for the New York courts. It is noteworthy that Mitchells admit at page 3 of their petition for reconsideration that they did agree to subordinate their mortgage to a certain lease.

However, nothing in the petition for leave to intervene justifies the granting of the petition for leave to intervene by the Commission and it should be denied. Without waiving its request that intervention be denied, applicant submits that the Mitchell petition for reconsideration should be rejected and/or found to be without merit. The contents of the Mitchell petitions are matters for the New York courts. Certainly if the courts of the State of New York find that the leases between Advine Realty and applicant should be set aside, applicant's proposal with respect to operation at such facility might not very well take effect. Again, the three year limitation of the certificate as proposed by the majority of Division 1 has merit.

XI

MOTION TO STRIKE AND IN ALTERNATIVE REPLY TO PETITION TO INTERVENE AND RECONSIDERATION OF ABG

Applicant moves that the petition for leave to intervene and petition for reconsideration of ABG be stricken in its entirety. ABG was fully aware of the proposal of applicant. Extensive hearings were held within the Village of Greenport at which all or any of the members of ABG could have appeared to testify in opposition to the proceeding. ABG cannot be heard to state that it did not know of the proceeding especially when it is represented by an attorney that is already a party to the proceeding.

ABG admits to the fact that it did not serve a complete copy of its petition for leave to intervene and petition for reconsideration because of "lack of resources, time limitation, and bulk". No justification exists for allowing ABG to have special rules applicable to it and force applicant to expend extensive sums of money to process its application and reply to various pleadings. ABG had ample opportunity to file a petition for leave to intervene and/or appear at the hearing pursuant to Rule 72 of the Commission's Rules of Practice.

Having failed to do so, its petition for leave to intervene and petition for reconsideration should be denied.

Without waiving its motion to deny the petition for leave to intervene and petition for reconsideration filed ABG, applicant must of necessity reply specifically to the various issues raised by ABG.

At page 2 of its petition, ABG states that no evidence has been presented on behalf of residents or owners of businesses in the Village of Greenport. These hearings were very well publicized through the local newspapers of the Village of Greenport. Any party had the opportunity to appear in opposition. Several witnesses appeared voluntarily in opposition to the proceeding. Attached hereto as Appendix "D", is a copy of a news article appearing in Suffolk Times, (a local newspaper in the Village of Greenport) November 22, 1973, which clearly shows that those parties that were desirous of appearing and testifying at the hearing could do so regardless of whether they were in favor of or opposed to the proposed ferry service.

While ABG alludes to signatures of 1,290 persons as being opposed to the decision of the Commission, the Commission should at least be apprised of the tactics utilized by ABG in soliciting the signatures of those parties appearing on Appendix A to its petition for reconsideration.

Attached hereto as Appendix "E", is a copy of an advertisement placed in the Suffolk Times on December 2, 1976 by the very same ABG soliciting signatures of members of the public. Clearly the scandalous nature of the advertisement directing the public's attention to such quotations as:

> "THE INTERSTATE COMMERCE COMMISSION SAYS: TO HELL WITH GREENPORT."

is a matter that should not be tolerated by the Commission. Obviously, each of ABG's members had its own employees sign same to bolster the "alleged" 93 page petition.

It is further difficult to fathom AGB's reasoning that it lacked resources to forward a complete copy of its petition for reconsideration upon applicant's representative and other parties. Yet, it had sufficient funds to pay for the advertisement as reflected in Appendix "E".

Applicant again directs the Commission's attention to its own statement appearing at 353 I.C.C. 71 wherein it stated "If we find that a particular party via unreasonable actions hindered good faith efforts by applicant to, in particular, operate in a manner which causes minimal environmental harm, we shall take matters into account in determining whether to extend the certificate granted herein."

Protestants and intervenors are not even waiting until a certificate is issued. They have already taken unreasonable action to hinder the good faith efforts of the applicant. While ABG and others have submitted newspaper clippings pertaining to the opposition of the proposed ferry service, the fact remains that there are other members of the public in favor of the ferry service.

There are mixed feelings within the Village of Greenport itself. Attached hereto as Appendix "F", is a newspaper clipping from Suffolk Life, November 28, 1976. Said article clearly shows that there are individuals within the Village of Greenport that feel that the proposed service would "be good for Greenport and good for business."

The problem with the Village of Greenport is that it just can't make up its mind. While the Village of Greenport recognizes that traffic changes must be made even without the proposed ferry service, it stubbornly refuses to take any action concerning traffic changes. The environmental impact statement refers to suggestions made to the Village of Greenport by Suffolk County officials. On December 15, 1976, as noticed through the newspaper clipping appearing in Suffolk Life, the latest Suffolk County Traffic Study again suggested that the Village of Greenport make certain changes (See Appendix "G").

In conclusion, ABG has not presented sufficient cause to allow it to intervene and file a petition for reconsideration in this proceeding.

Upon information furnished to applicant's president, no authority was ever given to counsel for ABG to file the ABG petitions for leave to intervene and reconsideration.

XI

REPLY TO PETITION FOR LEAVE TO INTERVENE AND PETITION FOR RECONSIDERATION FILED BY DNLA, CCSE, FISHERS, AND NELSECO

Applicant moves that the petitions for leave to intervene and petitions for reconsideration filed by DNLA, CCSE, Fishers and Nelseco be denied. Each of these parties were fully aware of applicant's proposal and each had ample opportunity to appear. None of the petitions set forth any facts to justify the intervention and reconsideration sought.

Without waiving its motion for denial of the petitions for leave to intervene and reconsideration, applicant replies thereto.

The petitions for leave to intervene and reconsideration filed by DNLA, CCSE, Fishers, and Nelseco all follow the same style and format of the petition for reconsideration filed by Cross-Sound. Aside from the fact that the petitions filed by DNLA, CCSE, and Fishers were filed by the same attorney, the fact remains that the information contained therein reflects information that could only have been furnished by Cross-Sound and/or its counsel. The same is true of the Nelesco pleadings. Only the attorney's name is different. It is interesting to note that the case citations especially those in CCSE are identical to those of Cross-Sound and BPJ. In its argument portion, CCSE states "based on a review of the record in this proceeding". It is extremely doubtful if counsel for DNLA, CCSE, Fishers or even Nelseco ever reviewed the record in such a short period of time. The transcript alone exceeds 2,500 pages. The numerous pleadings bring the record well into excess of 3,000 pages. The format and style of the pleadings of DNLA, CCSE, Fishers, and Nelseco, including the typing, are all identical.

In order to fully understand the primary purposes of the petitions for leave to intervene and reconsideration filed by DNLA, CCSE, Fishers, and Nelseco, the Commission should be apprised of the intertwined relationships of these parties and certain facts resulting in the petitions for leave to intervene and reconsideration.

It is noted that Nelseco holds authority from the Commission in Docket No. W-985. Nelseco's certificate authorizes a ferry service between New London, Connecticut and Block Island, Rhode Island. A certain John Wronowski, apparently the majority stockholder of Nelseco, testified at the oral hearing in 1973 in opposition to the proceeding. Mr. Wronowski's appearance was secured through the then protestant New London Freight Lines, Inc. and Mr. Wronowski attempted to discredit applicant's proposed operation based on Nelseco's operations between New London, Connecticut and Block Island, Rhode Island.

Subsequently, in January 1975, a new corporation known as Cross-Sound was organized and the operating authority of New London Freight Lines, Inc. was sold to Cross-Sound. The principal of Cross-Sound is John Wronowski, Jr. the son of the same John Wronowski that testified at the hearing, and the son of the same John Wronowski that owns and controls Nelseco as well as Interstate Navigation Company which holds authority in Docket No. W-843 (Subs 2 and 6) to operate a ferry service between Port Judith, Providence, Newport and Block Island, Rhode Island.

Throughout this proceeding, Nelseco, New London Freight

Lines, Inc., Cross-Sound, and the Wronowski family were aware that applicant had intentions of utilizing as a terminal, the so-called DeNoia property in New London, Connecticut. All parties were also aware that applicant held an option to purchase the DeNoia property. However, after the option expired, Cross-Sound, through the efforts of the Wronowski family commenced negotiations to purchase the same DeNoia property in order to foreclose the opportunity of applicant to utilize the DeNoia property as a ferry berth should the application be granted.

Attached hereto as Appendix "H", is a news article appearing in the New London Day on March 2, 1976 wherein Cross-Sound was negotiating with Vito J. DeNoia to acquire the property.

That there is a common link between Nelseco and Cross-Sound is further obvious in light of the petition for reconsideration filed by Nelseco wherein it shows that Nelseco was the ultimate party that acquired control of the DeNoia property by leasing the DeNoia property with an option to purchase. Again, the tactics taken by Cross-Sound and Nelseco should convince any reasonable person that the primary purpose of the leasing of the DeNoia property with an option of purchase, was to foreclose any opportunity of applicant to ever use the DeNoia property as a ferry berth.

There is no doubt that the Wronowski family and Nelseco have a large amount of financial and political power within the City of New London, Connecticut. It is applicant's position that Nelseco, Cross-Sound, and the Wronowski family have been instrumental in convincing the New London City Council not to renew the lease between applicant and the City of New London for the use of the City's (Municipal) pier.

Cross-Sound's petition for reconsideration contains therein as Appendix B, an excerpt taken from the minutes of the special meeting of the Council of the City of New London held on Monday, December 13, 1976 with respect to applicant's use of the municipal pier. However, applicant's president has now been informed that the same Council of the City of New London, at a meeting held on January 3, 1977 approved the use of its municipal pier to Nelseco so that Nelseco can use that same pier, free of charge, in order to operate a ferry service between New London, Connecticut and Groton, Connecticut, in transporting approximately 8,000 passenger vehicles per day.

It is thus difficult to conceive of the opposition of Fishers to the instant application. While Fishers apparently claims that the operatior by applicant from the municipal pier of the City of New London would conflict with its own operation between New London and Fishers Island, the fact remains that Fishers did not and does not oppose the utilization of the municipal pier by Nelseco in its proposed ferry operation between New London, Connecticut and Groton, Connecticut wherein 8,000 passenger vehicles would be transported to and from the same pier.

Considering (1) the fact that present counsel for DNLA, CCSE, and Fishers is the same counsel that represented New London Freight Lines, Inc. and Cross-Sound in certain Connecticut intrastate proceedings with respect to applicant's proposals before appropriate regulatory authorities in Connecticut, and (2) the fact that Nelseco, Cross-Sound and the Wronowski family are very active in business circles and undoubtedly members of DNLA and CCSE, the conclusion must be reached that Cross-Sound, Nelseco, and the Wronowski family have taken all possible steps at this time to hamper any proposed operation by applicant at New London, Connecticut.

Applicant presently has available other property suitable for a pier within the City of New London. However, in view of what has already transpired with respect to the opposition's attempt to "gobble up" and/or prevent applicant from utilizing known suitable and existing property for ferry purposes, the disclosure of the other available property to Mascony at this time will certainly be detrimental to applicant as undoubtedly Cross-Sound, Nelseco and/or any of its other affilliates would attempt to lease and/or secure the property at this time and further prevent the operation of applicant from becoming a reality.

Applicant's president has also been informed by the Executive Director of CCSE that no authorization was ever given for any petition for leave to intervene and reconsideration to be filed with the Commission on behalf of CCSE.

XII

ARGUMENT

Throughout this proceeding it has been evident that the parties opposing the applicant and in general Cross-Sound as the successor to New London Freight Lines, Inc. have been instrumental and successful in soliciting opposition to this proceeding through various means whatsoever in order to hamper, stymie, and foreclose applicant's operation.

One cannot deny that applicant has proceeded throughout this proceeding in good faith and has made every effort to comply with the Commission's regulations and to minimize any environmental impact. The attempt by applicant to commence its operation has been heavily opposed by Cross-Sound, BPJ, other protestants and intervenors through all sorts of forms of collusion, misrepresentations, scandalous advertising and remarks made to the public and to the press reflecting applicant and the Commission.

Typical of comments made to the public and the press are those of Brent Lynch of Cross-Sound as appearing in Suffolk Life after the report of the Commission was served and attached hereto as Appendix "I".

It should be noted that the same Brent Lynch was formerly an officer of New London Freight Lines, Inc. prior to the sale of the operating authority of New London Freight Lines, Inc. to Cross-Sound.

As further evidence that applicant intends to minimize any environmental effect, there is attached hereto as Appendix "J" a newspaper clipping from Suffolk Life, December 22, 1976, wherein applicant has been in contact with the Long Island Railroad for use of its property in the Village of Greenport as a proposed ferry berth. It should be further noted that the Village of Greenport has indicated that it would prefer applicant to utilize the Long Island Railroad property as a pier and that any opposition to applicant's ferry would dissolve if applicant could utilize that railroad property. Applicant's president has been further informed that in an executive session of the Village of Greenport on January 4, 1977, the Mayor and the Village Trustees were in favor of applicant's operations from the Long Island Railroad property.

The opposition is also attempting to show that applicant is in no position to commence operations should the application be granted. In support of their position, they refer to the foreclosure of the mortgage on the S.S. Greenport. Contrary to protestants' allegations, the S.S. Greenport has not been auctioned.

In order to fully understand the background of the financial matter concerning the S.S. Greenport and the financial obligation of applicant to Chemical Bank of New York the Commission must be apprised of certain facts.

Initially, applicant undertook, and invested substantial sums of money in order to acquire four vessels. The total cost of these vessels exceeded $2,000,000.00. In addition to substantial down payments on vessels, applicant has already expended, in excess of $380,000.00 to renovate the vessels.

Applicant secured financing from the Long Island Security National Bank. Applicant placed on deposit with Long Island Security National Bank, the sum of $100,000.00 which was held in the bank in the form of a Certificate of Deposit. In addition, applicant issued a demand note running in favor of the Long Island Security National Bank for $300,000.00, said note bearing interest at 9 percent. Subsequently, the Long Island Security National Bank was acquired by the Chemical Bank of New York. The Chemical Bank of New York called the demand note of 9 percent unless applicant was willing to execute another demand note at 15 1/2 percent. In addition, the Chemical Bank of New York removed the $100,000.00 deposit with the Long Island Security National Bank. The action taken by the Chemical Bank occurred in the summer of 1975. It obviously follows that applicant was virtually forced to execute a new demand note for $300,000.00 at 15 1/2 percent, and thus an additional financial burden was created.

Co-counsel for applicant had written to the Commission on August 5, 1975 concerning the status of the instant application and co-counsel was informed by the Commission on August 6, 1975, that a decision was expected to be forthcoming in the near future. A copy of the Commission's letter addressed to co-counsel is attached hereto as Appendix "K".

Applicant sincerely felt in August 1975, that if a final decision in its application would be rendered within a reasonable time, it could become operational and thus generate sufficient revenues to meet its debt service. Applicant has been servicing a debt of $30,000.00 per month for 3 years with no income. It necessarily follows that a time must come for applicant and its stock holders to re-evaluate the entire venture. In view of the lengthly time it has taken for the report of the Commission to be issued, it further follows that there has been a severe drain on applicant's cash position in servicing its debt, especially with the increase in the demand note by the Chemical Bank of New York from 9 percent to 15 1/2 percent.

To further conserve cash, the vessel S.S. Henlopen was acquired by Provident Steamboat Company which is a stockholder of the applicant. The agreement between applicant and Providence Steamboat allows applicant to lease the vessel from Providence Steamboat should its application before the Commission be approved and ultimately be repurchased from Providence Steamboat.

Applicant's stockholders are in a position to and are willing to invest an additional $350,000.00 in cash should applicant be authorized to operate. However, any prudent person would readily agree that such investment of cash would be imprudent if applicant is not authorized to commence operations.

Although Cross-Sound contends that it now offers a reservation service, it cannot be overlooked that the matter of a reservation service was an innovation proposed by applicant. For 30 years, Cross-Sound and its predecessor have promised an adequate service to members of the public. For 30 years members of the public have been forced to utilize antiquated World War II landing craft between New London, Connecticut and Orient Point, Long Island. The time has come when the public must have available to it a service such as that proposed by applicant. The majority of the Commission was correct in finding that the service presently offered and available to the public via Cross-Sound and its predecessor New London Freight Lines, Inc. is inadequate and it was incumbent upon these parties to make some effort to improve the service beyond merely planning. As a matter of fact it was only after applicant filed its proposal that Cross-Sound and its predecessor entered into "planning stages" and thus each showed lack of concern to the public. The Commission is correct in that such lack of concern did contribute to the filing of the instant application.

The majority of the Commission was also correct in its statement at 353 I.C.C. 69 that there is no right to engage in water transportation without competition. Such a statement is in accord with the opinion of the court in Coyle Lines, Inc. -v- United States, 115 Fed. Supp. 272 wherein the court held that a carrier first in business has no immunity against future competition, and the fact that service proposed to be performed by an applicant would provide competition to another carrier, was not, alone, sufficient to vacate an order of the Interstate Commerce Commission granting the applicant a certificate.

The Commission has further held in numerous water carrier cases, that shippers and communities are entitled to adequate transportation service by water, with its inherent benefits and advantages, upon proof of a need therefore. Newtex S.S. Corp. - Extension, 285 I.C.C. 260. Cross Sound and its predecessor have held a monopoly in a ferry service between the east end of Long Island and New London, Connecticut for approximately 30 years. While Cross-Sound and its predecessor New London Freight Lines, Inc. have held a monopoly between the points and/or area involved for 30 years, it is agreed that such a monopoly, standing alone, is not a sufficient justification for the establishment of a new operation in the absence of showing of some inferiority or inadequacies in the transportation services of the existing carrier. However, the Commission has concluded that where the fact of monopoly has been established, it is entitled to look to protestant for proof and it should be able affirmatively to find that the carrier holding such petition has not used its exclusive occupancy of the field in question, or allowed it to operate to the disadvantage of the public, failing which the very fact of monopoly may be considered as a circumstance requiring remedial action. West Coast Bus Lines Common Carrier Application, 41 M.C.C. 269, 290.

The instant proceeding conclusively shows that Cross-Sound and its predecessor New London Freight Lines, Inc. have held such a monopoly, that there is an inferiority of service, and that there is and has been an inadequacy of service to the general public.

Cross-Sound and its predecessor New London Freight Lines, Inc. have used their exclusive occupancy and monopoly to the disadvantage of the public.

The opposition to this proceeding relies upon the dissenting opinion as justification for reversal. However, the opposition and the dissenting opinion fail to recognize Article 1, Section 8, Clause 3 of the Constitution which provides that the Congress shall have power to regulate commerce. This power was specifically given to the federal government because commerce between the states is not entirely the concern of one or a few states, but is vital to all. The welfare of interstate commerce could not be left and should not be left at the mercy or the whim of any state or any local community which might penalize a burden of commerce of others. The position taken by the Village of Greenport and other parties is almost identical to the oldest case involving regulation of interstate commerce decided in 1824 in Gibbons -v- Ogden, 9 Wheat. 1,6 L. Ed. 23. In that case, the State of New York granted a franchise to Robert Fulton and one Livingston to operate steamboats between New York and New Jersey. Fulton and Livingston transferred that right to Ogden. One Gibbons also began operating a steamboat between New York and New Jersey under a federal statute. Ogden secured an injunction from the New York court ordering Gibbons to cease operations. Gibbons appealed to the Federal courts, finally reaching the Supreme Court wherein the Supreme Court contended that such operation between New

York -New Jersey was interstate commerce and thus under the federal jurisdiction.

In essence, the position taken by protestants and intervenors is that the Village of Greenport should be the party to determine whether a certificate of public convenience and necessity to engage in interstate commerce should be issued. It is recognized that now, under NEPA, certain environmental considerations must be given. The majority of the Commission recognized that applicant must secure docking facilities in order to operate a ferry. Unlike a motor carrier operation where a terminal could be located at any point within a particular community, the operation of a ferry terminal must be at a point immediately adjacent to water. Unlike a motor carrier operation, facilities for a water ferry berth and dock are limited. Considering the fact that no person has the right to maintain a monopoly to engage in water transportation without competition, especially where the present service has not been satisfactory, the conclusion must be reached that applicant should be granted the certificate as proposed by the majority of Division 1.

Applicant is agreeable to the three year term certificate. It is submitted that the granting of the certificate with the conditions framed by Division 1 would allow applicant an opportunity to improve the landing points to allow vessels to dock, secure and improve suitable staging areas, to comply with various local, state, and federal regulations, and secure appropriate permits.

It necessarily follows that if applicant is unable to secure the appropriate permits or to comply with certain local, state, and federal regulations, the operation would not commence.

XIII

WHEREFORE, applicant respectfully prays that the Commission find (1) that the petitions for reconsideration filed by Cross-Sound, BPJ, East End, NYDOT, SIGF, and Village of Greenport to be without merit and should be denied; (2) that the petitions for leave to intervene and petitions for reconsideration filed by DNLA, CCSE, Fishers, Nelseco, Mitchells, and AGB be rejected and/or in the alternative denied; and (3) that present and future public convenience and necessity require operation by applicant in interstate or foreign commerce as a common carrier by water, of general commodities and passengers by self-propelled vessels, between New London, Connecticut and Greenport, Long Island subject to the condition that it shall be limited in point of time, to a period expiring three years from its date of issue as proposed by Division 1 in its report.

DATED AT:

15 Court Square
Boston, Mass. 02108
January 6, 1977

Respectfully submitted,

Frank J. Weiner
Attorney For Applicant

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of January, 1977, served a copy of the foregoing document upon all parties of record in this proceeding, by mailing, postage prepaid, a copy thereof, properly addressed.

Frank J. Weiner

NEW YORK STATE
DEPARTMENT OF TRANSPORTATION
Raymond T. Schuler, Commissioner

1220 Washington Avenue, State Campus, Albany, New York 12226

APPENDIX "A"

NOV 1 1973

Mr. George R. Power, President
Mascony Transport and Ferry Service, Inc.
206 Masonic Building
New Bedford, Mass. 02740

Dear Mr. Power:

Your letter of October 4, 1973, addressed to Governor Rockefeller, has been forwarded to this Department.

The Department has decided not to participate in the I.C.C. hearing on your application since at this time we do not have any completed studies or other data which would assist the I.C.C. in making a decision regarding the need for new service in this area.

However, we are most interested in continuing to improve all modes of transportation between Connecticut and New York. We anticipate that with passage of the pending transportation bond issue, there will be additional means for the Department to assist in improved marine transportation.

Sincerely,

Martin D. Zell for

RAYMOND T. SCHULER
Commissioner

APPENDIX "B"

Robert W. Tasker

ATTORNEY AT LAW

425 MAIN STREET
GREENPORT, NEW YORK 11944
516-477-1400

April 4, 1975

John J. Munzel, Esq.
548 Roanoke Avenue
Riverhead, New York 11901

Re: Mascony request to Village of Greenport
for approval of Ferry Terminal

Dear John:

As you know, I appeared at the Special Meeting of the Village Board on March 31, 1975 on behalf of certain residents and property owners concerning the matter of the application of Mascony Transport and Ferry Service Co. for permission to establish a ferry terminal in the Village of Greenport. Under the rules established at that meeting, a very limited period of time was afforded to present facts as a result of which I was not able to present certain information which I believe should be available to the Village Board before it takes any official action in this matter.

I therefore believe that it is proper to apprise you, as Village Attorney, of certain facts which may have serious legal implications to the Village and possibly to the individual board members.

Certain members of the Village Board were of the opinion that by the adoption of the Board resolution of June 18, 1973 the Village Board had committed itself to support Mascony's efforts to establish a ferry terminal in Greenport and that in reliance thereon Mascony purchased certain parcels of real property in the Village and that therefore the Village Board is either legally or morally committed to support Mascony in its endeavors. I do not believe this is the case. The June 18, 1973 Board resolution was conditioned upon Mascony taking title to three parcels of land prior to September 1, 1973. An examination of the records in the County Clerk's Office will reveal that Mascony failed to meet this condition. In fact, one parcel was not acquired until more than one year thereafter. Examination of the records in the County Clerk's Office indicate that the Boback parcel was acquired by Mascony subject to an existing lease which does not expire until December 31, 1979. Unless there is information not disclosed by these records, it would appear that Mascony would not be permitted to take possession of this parcel until such lease expires and accordingly could not utilize this property for its ferry operatio for at least the next four years. The County Clerk's records also indicates that in the acquisition of the parcels, Mascony gave a purchase money mortgage of $100,000, and thus had actually invested less than one-half of the $300,000 amount mentioned at the meeting. Because of these circumstances I do not see that the Village Board is either legally or morally obligated to support the Mascony application.

As was indicated at the meeting on March 31st, the latest Mascony plan is to utilize a substantial portion of the open space of the Advine property, extending from the Burden property on the west, easterly to First Street and to have ferry traffic exit onto Front Street through a narrow alley and then to proceed north on First Street. This plan would appear to raise serious legal questions. First, the only lease of which I am aware is the one dated February 16, 1974 which embraces only the westerly portion of the Advine property. This is the only lease mentioned in the Mitchell subordination agreement recorded in Liber 7609 at page 181. If Advine executed a subsequent lease, it should be made available as it may well have occurred subsequent to the date that Advine filed a petition in bankruptcy in which event the validity of such lease may be in question in the absence of authority from the referee. Secondly, the alley way entering Front Street at its intersection with First Street is subject to numerous easements running in favor of the owners of property in the vicinity thereof as well as an easement in favor of the Village of Greenport. Any action by the Village Board which authorizes the interference with or the obstruction of these rights may subject the Village to legal proceedings by the persons adversely affected thereby.

In my examination of the statutory law as well as applicable Village Ordinances, I have been unable to find anything which authorizes the Village Board to give a permit, consent to, or in any other manner authorize the establishment of a ferry terminal by Mascony in the Village of Greenport. Unless such statutory authority exists, any action by the Board in this regard would therefor be in excess of its powers and accordingly illegal. The Village Planning Board is the only authority in the Village which has jurisdiction in this matter. The Village Zoning Ordinance requires site plan approval by the Planning Board prior to the establishment of any use in a W-C use District. No such site plan has been prepared, presented or approved by the Planning Board. Article V of the ordinance requires the Planning Board to determine the number and location of off-street parking spaces. No such off-street parking plan has been presented or approved by the Planning Board. In view of the foregoing, I am unable to understand how the Village Board has any authority to consider any aspect of the Mascony matter, and it certainly can not usurp the powers of the Planning Board. In fact, I believe that the only action that the Village Board could legally take would be to adopt a resolution requesting the ICC to withold further consideration of the Mascony application pending before it until all local legal requirements have been met. Any other action taken by the Board would in effect be tantamount to the Board members participating in a violation of its own ordinances, which could lead to serious legal consequences.

A more serious matter which I believe you should be aware of is that of the activities of the Village Industrial Commission, which as you know is composed of a Chairman and the four Village Trustees. Of particular importance is the letter of the Commission Chairman dated March 5, 1975 addressed to the District Superintendent of the ICC. A review of the Village records as well as the statements made by Board members at the March 31st meeting, indicates that the Board members were aware that such document was filed with the ICC and that the statements contained therein were false. It may well be that such conduct is a violation of the Penal Law (see Section 175.30, et seq.). It would seem that at the very least, action should be taken to expunge this document from the records of the ICC.

Another aspect of this matter is a possible effect on the proposed renovation of the railroad pier to be funded by State and County funds. The minutes of the Village Industrial Commission meeting held on July 5, 1974 reveal that there was concern regarding the establishment of Mascony's ferry terminal in the vicinity of the pier. This concern as well as the intemperate remarks of Mascony representatives directed at Assemblyman Duryea at this meeting could well cause a loss of this recreational facility as far as any assistance from the State is concerned.

Yours very truly,

ROBERT W. TASKER

RWT:kc

No. 511729

RECEIPT FOR CERTIFIED

SENT TO
John J Munzel Esq.
STREET AND NO.
548 Roanoke Ave
P.O., STATE AND ZIP CODE
Riverhead NY
OPTIONAL SERVICES
RETURN RECEIPT SERVICES
DELIVER TO ADDRESSEE ONLY
SPECIAL DELIVERY (extra fee required)
PS Form 3800 Apr. 1971
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

4-11-75

APPENDIX "C"

April 11, 1975

John J. Munzel, Esq.
548 Roanoke Avenue
Riverhead, New York 11901

Re: Mascony Transport and Ferry Service, Inc.

Dear Mr. Munzel:

Please be advised that I represent the above-referenced corporation.

A letter from Robert W. Tasker, Esquire to you dated April 4, 1975 has recently been brought to my attention. In it, Mr. Tasker makes certain allegations concerning my cleint's holdings and plans in and for the Village of Greenport. I am taking this opportunity to respond to those portions of Mr. Tasker's letter that are not frivolous. My comments on Mr. Tasker's letter are contained in the following numbered paragraphs.

1. Mr. Tasker does not identify his clients nor does he state that the said letter was submitted in his own behalf. In view of this, I question his standing as a protestant before the Village Board.

2. Mascony Transport and Ferry Service, Inc. has a complete right of access to the parcel known as the Bohack property by virtue of a surrender made by Bohack.

3. There is no impediment, legal or otherwise, preventing Mascony Transport and Ferry Service, Inc. from utilizing the egress located to the east of Mitchell's property. Mascony Transport and Ferry Service, Inc. will not obstruct nor will it infringe on the rights of any other user.

4. Mascony Transport and Ferry Service, Inc. has complied with all zoning ordinances of the Village. The Planning Board has yet to determine which of the site development plan elements it wants Mascony to submit in accordance with P 9.2.3.1 of its procedure. Mascony Transport and Ferry Service, Inc. is in complete compliance and awaits only the pleasure of your Board.

In view of the foregoing, I am sure you will agree with me when I say the opposition to my client's I.C.C. application by the Mayor of Greenport and the Village Planning Board is highly improper and actionable. I would expect, at the very least, that the Trustees will adopt a resolution, on your recommendation, withdrawing any and all opposition to Mascory Transport and Ferry Service, Inc.'s I.C.C. application and forward a copy immediately to me.

Thank you very much for your immediate attention to this matter. I look forward to hearing from you in the immediate future.

Very truly yours,

Peter F. Staiti

PFS/caj

APPENDIX "D"

SUFF. TIMES.

November 22, 1973

MASCONY

News In Brief

FERRY TESTIMONY INVITED

Several callers have asked George Power, president of Mascony Transport and Ferry Service Inc. what they have to do to appear at the Interstate Commerce Commission public hearings to decide whether the company is to get a franchise to operate a new ferry route across Long Island Sound.

"I would like to tell anybody who is interested in testifying for or against" he said to the Suffolk Times, "to come to the hearings."

The ICC hearings, which had begun in New London, will continue in Greenport at the Village Hall, December 10 at 2 p.m. and are scheduled to go through the week, starting each day at 9:30 a.m.

Mascony is seeking permission to start a ferry service from Greenport to New London. The present service line, the New London Freight Lines which operates from Orient to New London, opposes the franchise on the basis that there is not enough business for two companies.

APPENDIX "E"

From The Suffolk Times, November 25, 1976.

The Interstate Commerce Commission last week granted Mascony Transport and Ferry Service Inc. permission to run a ferry between New London and Greenport. The reaction in Greenport was shock and disbelief.

The Commission itself admitted in the 2-1 decision that the volume of traffic introduced into the village's narrow streets may be bad for Greenport's environment. But, the two members said, that would be offset by savings of 600,000 gallons of gasoline by motorists who would not be driving around Long Island Sound.

The dissenting member said Greenport's environment orderly planning for the future was being sacrificed for "commercial exploitation."

The senior I.C.C. commissioner, disagreeing with the other two, said this -

In plain words, the INTERSTATE COMMERCE COMMISSION says:

to HELL with GREENPORT!

LET the Mascony Ferry traffic tie up Greenport streets, kill the businesses, and kick people out of jobs.

LET the empty stores stay empty - let the others close their doors.

LET a hundred businesses fail.

LET the value of our homes fall out of sight.

LET our buildings burn while the volunteer fire fighters fight through Traffic jams to get there.

LET the heart attack or accident victim die while the rescue ambulance tries to reach him through the traffic-crowded streets.

But let the Mascony Ferry come to Greenport; LET THEM THROTTLE THE LIFE OUT OF US with trucks, cars, and trailers spewed into our already overcrowded streets.

This is what the I.C.C. ruling in favor of the Mascony Ferry means:

LET the CONVENIENCE of a FEW be served - but TO HELL WITH GREENPORT!

Greenport has been a living community since before our nation was founded - and we don't think the Interstate Commerce Commission should be allowed to kill Greenport now.

The support of everyone in the area is needed now - for everyone on the North Fork can be hurt by the Mascony Ferry.

HERE'S WHAT WE MUST DO NOW:

1. Go to any store shown below with an asterisk* beside its name and sign the petition that's there.
2. Volunteer to get the signatures of neighbors and friends in your own North Fork community.

You can get copies of the petition at any of the stores with an an asterisk*.

There are just 11 days left to do the job. Won't you please help to get it done now!

This Advertisemnt Is Paid For By:

*Washington White's Sons
*Arcade Department Store
[illegible]an's Har[illegible]
[illegible]laudio's [illegible]
[illegible]oward V[illegible]rance
*North Fork Press

*Preston's Marine Supplies
*Hughes Antiques
[illegible]eeler's Je[illegible]
[illegible]ppy's Cl[illegible]
[illegible]t End Su[illegible]
I G.A. Greenport

*Brandi's She Store
*Colonial Drug
[illegible]er 'actory [illegible]
[illegible]ft Store
[illegible]ck Haird[illegible]
*Greenport Book Shop

*Claudio's Liquors
*North Fork LaundriKar
Harry Mitchell's Family Corp.
*(Mit[illegible]urant)
*Silve[illegible]el
Porky's Restaurant

Fleet Lumber Company
Stirling Harbor Marina
*Greenport Furniture & Carpets
Yarn Sp[illegible]
Down th[illegible]d.

Greenport merchants divided on new ferry

by Dan Ruben

Although Greenport officials are sharply opposed, merchants along Front Street are divided over a recent ruling to permit a ferry company to operate between Greenport and New London, Connecticut.

The Cross Sound Ferry presently gives service to New London from Orient. The US Interstate Commerce Commission's (ICC) ruling offers Mascony Transport and Ferry the chance to compete.

Blockaded

Greenport Mayor Joseph Townsend said the new ferry service would so aggravate an already tough summer traffic problem, that shops and stores on Front Street would be "blockaded."

Some Front Street business people disagree. "When the traffic situation gets intense as it often does during the summer, I can't see how it can get much worse," said Carol Copas of the Rhambline Restaurant. "The ferry might provide the impetus for the village to do something to straighten out the traffic problem."

Copas was convinced a new ferry would increase business. "I don't see how it could hurt business," she said. "We're not getting any business from the people who take the ferry from Orient, that's for sure."

Lose tourists

"Whatever little the ferry riders might buy would be offset by those who will not come into town because of the traffic problem," Frank Mountain of Colonial Drugs countered.

But Alice Playton of Myer's Tavern wouldn't buy that argument. "People can cope with the traffic," she said. "I think this new ferry would be good for Greenport and good for business. I don't see how it would hurt anything."

Lois Melas, of Paradise Sweetshop, thinks a new ferry would hurt her business. "It would tie up traffic and discourage other customers from coming downtown. The streets aren't wide enough for all that traffic. And traffic is too heavy already in the summer."

Environment not considered

Townsend said the "environment of Greenport was not considered by the two ICC officials who voted to grant the permit." The dissenter, Rupert Murphy, Townsend said, "eloquently expressed how this ferry service would adversely alter the town."

The majority opinion of the ICC emphasized a need for competitive ferry services. One hundred riders of Cross Sound's predecessor, New London Freight Lines (NLFL), testified the service was poor because of long waits, sometimes up to six hours, and because of the "unsafe or unsanitary condition of the vessels."

Cured problem

Cross Sound took over the NLFL in February of 1975, and Brent Lynch, a co-owner of Cross Sound said these conditions have been corrected. Lynch cited the installation of a reservation system as the cure to the waiting problem.

The boats, Lynch admitted, are old. Two of them are converted World War II fighters and are over 30 years old, but he maintained they are safe and sanitary. "We are in the process of building a new vessel, and we will continue to build new vessels until the old vessels have been replaced."

The first $1.4 million craft is expecte be launched in June, Lynch said, wit least two more to be built after that withi the next four years. Since taking over, Cross Sound has gone to a year-round schedule.

Service excellent

Townsend said he is a regular ferry rider of the ferry, and that the service has been excellent since the management changed. The mayor said he has not had to wait more than a half an hour since the reservation system was instituted.

Lynch said the economic survival of his operation would be threatened by a new Greenport to New London ferry. "Our operation has always been marginal. Any diversion of traffic will jeopardize our business. It is virtually inconceivable that two parallel ferries can survive."

Decision ridiculous

Calling the decision "ridiculous," Lynch said he would appeal it. He said he was confident of a reversal because Murphy, the dissenting ICC member is the "senior ICC member."

In his dissenting opinion, Murphy blasted the ICC's refusal to permit Cross Sound to present evidence of their improved service, while at the same time, it allowed Mascony to present new evidence.

APPENDIX "F"

APPENDIX "G

County suggests traffic changes, village hedges

by Dan Ruben

A county traffic study released last week, urged the institution of a one-way street circulation system and the selected prohibition of downtown on-street parking, suggestions which local planners may not consider popular.

"It is essential that village officials recognize that traffic volumes during the summer months have reached saturation levels, and that positive action is required to avoid major traffic problems in the future," the report stated.

Greenport village officials, recognizing the serious summer traffic problem, requested the county to make the study earlier this year.

Responding to the suggestion of a one-way street circulation system, planning board chairman Jon Richmond said, "Everyone will react negatively to this," and indicated the board will recommend a plan to create more off-street parking so that the number of on-street parking spaces can be reduced.

The traffic study found that during the summer, 10,000 cars travel on Front Street each day. "The quality of traffic service is poor in the business district. Traffic congestion and delays are prevalent with the principal causes being narrow travel lanes, marginal friction created by parked vehicles along both sides of the road, and inefficient traffic control at the Main Street-Front Street intersection," stated the report.

Richmond hopes the elimination of some of the on-street parking on Front Street, and possibly all of the parking spaces on one side, will help the flow of traffic.

The planning department head also said a better blinker system at the Front Street and Main Street corner would be considered. "It isn't necessary to stop the cars in all directions at that corner," Richmond said.

During 1974 and 1975, there were 53 accidents along Front Street and Main Street, the study reported. "The accident rate along this road is estimated at three and four times the expected rate of a two-lane roadway through a business district."

The narrowness of the road and the restricted sight lines caused by parked vehicles were considered in the study to be the main culprits. Richmond said selected parking spaces on Front Street which impede sight lines will probably be eliminated.

SUFFOLK LIFE 12-15-76

APPENDIX "H"

Cross Sound seeks Bank St. ferry berths

NEW LONDON — Cross Sound Ferry Service, which operates the Orient Point Ferry, is negotiating to lease or buy property off Bank Street for berthing.

Negotiations are taking place between the ferry company and the DeNoia family, which owns the property off Sparyard Street.

The land has been proposed by a possible competitor of Cross Sound, Mascony Transport and Ferry Service, as the New London terminal for a second ferry service to Long Island.

However, Vito J. DeNoia, one of the owners of the Sparyard Street property, said Mascony allowed an option on the property to run out a year ago.

Mascony has proposed using City Pier as alternate terminal. It recently was granted a six-month renewal of its lease of the north side of the pier.

The City Council considered reversing its earlier decision to extend the lease but was advised against it by Law Director Edmund J. Eshenfelder.

George Hammel, a spokesman for Cross Sound, told the council his firm does not intend to use the Sparyard Street property as a terminal. It currently uses a terminal on Pequot Avenue and is developing a new one north of City Pier at the downtown site of Thames Shipyard and Repair Co.

Hammel said the Sparyard Street site will be used to berth ferry boats.

DeNoia said today the two are close to an agreement over either lease or sale, or a combination of the two.

The council considered reversing its decision after being informed Mascony did not have an option on the DeNoia property.

"New London, Day" 3-2-76

APPENDIX "

Mascony Granted ICC Permit For Crossing

Mascony Ferry Corporation's application for a permit to operate a cross sound ferry between Greenport and New London, Conn., was granted by the Interstate Commerce Commission last week, an action expected to trigger an appeal by the Greenport Planning Board and action by the Village Board of Trustees. The planning board acts as intervenors, a role not sought by the village board.

Jonathon Richmond, planning board chairman, stated he will consult with other members of the board and ask for a formal statement from the Greenport Village Board before going ahead with the appeal. Neither of the village agencies received formal notification from the ICC on the ruling in favor of Mascony. Greenport's Mayor Joseph Townsend first learned of the Mascony permit Friday when Brent Lynch of Cross Sound Ferry, Orient-New London, told him it was in the Federal Register.

Lynch stated Monday the ICC had denied Cross Sound Ferry, Orient-New London, an opportunity to rebut the Mascony appeal. "He's not in operation yet and hell will freeze over before he is," said Lynch adding, "It was a 2-1 decision with the senior member dissenting. We have 30 days in which to file an appeal. We expect to win that appeal."

George Power, president of Mascony, stated he received confirmation from the ICC but declined to comment until his counsel reviews the opinion handed down. The application was made 42 months ago.

There appears to be some confusion on the location approved. The initial site sought by Mascony was in the rear of property owned by the

(Continued on Page 7)

APPENDIX "J"

FOLK LIFE NEWSPAPERS Wednesday, December 22, 1976

Dock ferry on RR property

by Dan Ruben

If Mascony Ferry can work out a deal for a piece of Long Island Railroad (LIRR) waterfront property at the foot of Third Street, Greenport village board opposition to the ferry might dissolve.

The board went on record last week opposing the ferry located at the Mascony property on Front Street. Later Mayor Joseph Townsend said it was the consensus of the board that the Third Street location would be "vastly preferable".

Problem 'alleviated'

Townsend said the intense traffic problem the ferry would bring if located on Front Street would be "mostly alleviated" if it were to locate on the LIRR property.

George Power of Mascony said he would be agreeable to locating on the railroad property if he would get a lease agreement from the railroad.

"We have always made ourselves available to cooperate with the village," Power said. "We would be perfectly willing to move to the LIRR location."

The railroad property has been cited before as a possible ferry location.

An LIRR spokesman said last week, "We have to know specifically what the proposal is and what we need in the way of land. We don't know the exact dimensions. We can't say whether or not we'll consider a leasing agreement."

Emphatic no

Power and Townsend have different versions of past contracts with the LIRR. Townsend said he met with Power and LIRR officials a year ago, and that the railroad's answer was an "emphatic no".

Power said he was in correspondence last March with the late LIRR President Walter Schlager. The railroad would consider a leasing agreement, Power said, if the village would indicate their interest. The village did not indicate any such interest, the Mascony president said.

"That's not true," Townsend replied. "We approved a meeting with Mr. Power to discuss the railroad property. He never responded to that."

Both sides, however, now say they are willing to sit down together to discuss the railroad site.

One drawback to the railroad location is that in order to satisfy the village board, a half mile access road would be needed to connect Ninth Street with the site so that ferry traffic would avoid the business district.

Townsend said he would expect Mascony to pay for the road. Power said he was willing. "The railroad would have to sanction the building of the road," Power said. "I'd be receptive to that. If they feel that is where they want us, I hope we can negotiate with the railroad."

The Greenport planning board, however, is remaining an intervenor in an appeal against the Interstate Commerce Commission decision which granted Mascony approval for locating in Greenport.

Jon Richmond, the chairman of the planning board, said he would make no comment on the railroad site proposal until the planning board receives a formal request to review it.

APPENDIX "K

Interstate Commerce Commission
Washington, D.C. 20423

August 6, 1975

Mr. Robert W. Ginnane
Galland, Kharasch, Calkins & Brown
Canal Square
1054 Thirty-First Street, N.W.
Washington, D. C. 20007

Dear Mr. Ginnane:

Thank you for your letter of August 5, 1975, concerning the proceeding in docket No. W-1270, the application of Mascony Transport and Ferry Service, Inc.

As you know, this proceeding is presently pending on exceptions filed to the Administrative Law Judge's initial decision. It involves several complex issues and its review requires a complete analysis of the rather lengthy record produced at the oral hearing. Be assured, however, that the matter is currently under active consideration and I expect that a decision will be forthcoming in the near future.

I trust this satisfies your inquiry.

Sincerely yours,

Rupert L. Murphy

Rupert L. Murphy
Commissioner

cc: All parties of record ✓

DOCUMENT 354

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

CROSS-SOUND FERRY SERVICES, INC.,)
)
Petitioner,)
)
v.) No. 77-4162
)
THE UNITED STATES OF AMERICA and)
INTERSTATE COMMERCE COMMISSION,)
)
Respondents.)

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of November, 1977, served a copy of the Joint Appendix herein either by hand delivery or by first class mail, postage prepaid, upon the following:

Ellen K. Schall, Esquire
Office of the General Counsel
Room 5412
Interstate Commerce Commission
12th and Constitution Ave., N.W.
Washington, D. C. 20423

Andrea Limmer, Esq.
Justice Department
9th and Constitution Ave., N.W.
Washington, D. C. 20530

Peter R. Reilly, Esq.
955 L'Enfant Plaza North, S. W.
Washington, D. C. 20024

Frank J. Weiner, Esq.
Wesley S. Chused, Esq.
15 Court Square
Boston, Massachusetts 02108

Richard T. Haefeli, Esq.
McNulty, DiPietro, Nesci
& Haefeli
130 Ostrander Avenue
P. O. Box 757
Riverhead, New York 11901

Arthur D. Bernstein, Esq.
Galland, Kharasch, Calkins & Short
Canal Square
1054 Thirty-first Street, N.W.
Washington, D. C. 20007

Neal A. Jackson

Neal A. Jackson

file - Mascony
Doc 354

COPY

LAW OFFICES
OF
FRANK J. WEINER
15 COURT SQUARE
BOSTON, MASS. 02108

FRANK J. WEINER
WESLEY S. CHUSED

AREA CODE 617
742-3530

February 18, 1977

Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Re: Docket No. W-1270
Mascony Transport & Ferry Service, Inc.

Dear Mr. Oswald:

On January 20, 1977, Joseph F. Regan, Esq. had written to you concerning certain allegations appearing in applicant's reply to petitions for reconsideration and petitions for leave to intervene.

It is my understanding that William E. Lockwood, President, Chamber of Commerce Southeastern Connecticut, on February 15, 1977, forwarded an original letter to you concerning the position of the Chamber of Commerce Southeastern Connecticut.

Enclosed herewith, are additional copies of that letter that has been forwarded to you, and it should be noted that the petition for leave to intervene and reconsideration was filed by the Chamber of Commerce Southeastern Connecticut on the request of Cross Sound Ferry Service, Inc.

This is the same Cross Sound Ferry Service, Inc. referred to in the reply to the petition for reconsideration and the same Cross Sound Ferry Service, Inc. which opposes the subject application.

Very truly yours,

Frank J. Weiner

FWJ/aj8
Enclosures
cc: All Parties

(203) 443-83

Chamber of Commerce
Southeastern Connectic

105 HUNTINGTON STREET • ONE WHALE OIL ROW • NEW LONDON, CONNECTICUT 063

February 15, 1977

Mr. Robert Oswald, Esq.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Reference: Docket #W1270
Mascony Ferry Service, Inc.
Cross Sound Ferry Service, Inc.

Dear Mr. Oswald:

The intent of the board of directors of the Chamber of Commerce of Southeastern Connecticut in retaining an attorney in the matter of Docket #W1270 was not to oppose the Mascony application.

The board acted on the request of one of our members - Cross Sound Ferry Service, Inc. - and supported by many of the business leaders in the City of New London to request a hearing of all of the pertinent information now available.

The business community believes that quality year round ferry service to and from Long Island should be maintained and will support whatever action your Commission takes to ensure that service.

Sincerely,

William E. Lockwood
President

WEL:ch